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Pamphlets on commerce

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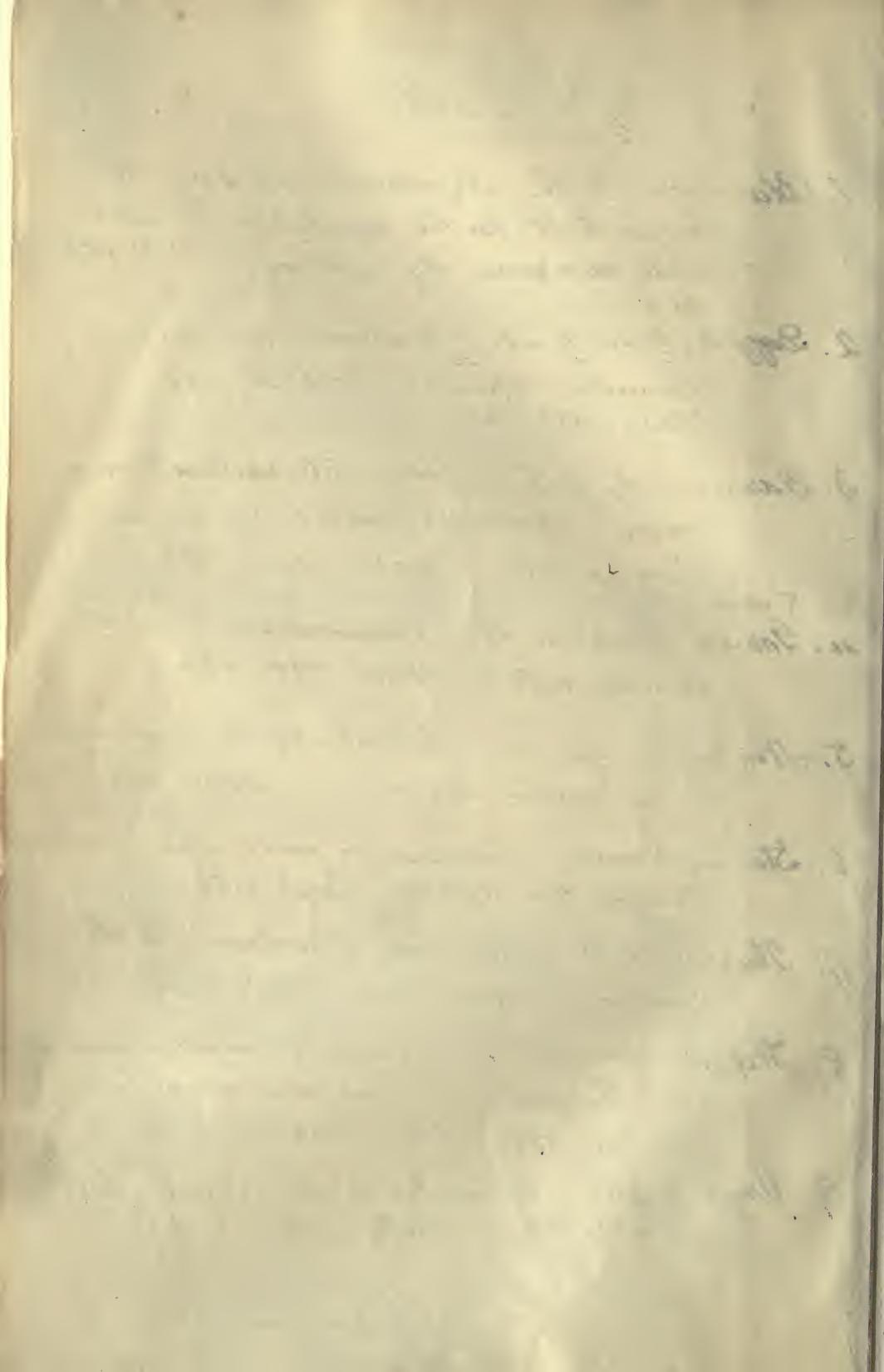
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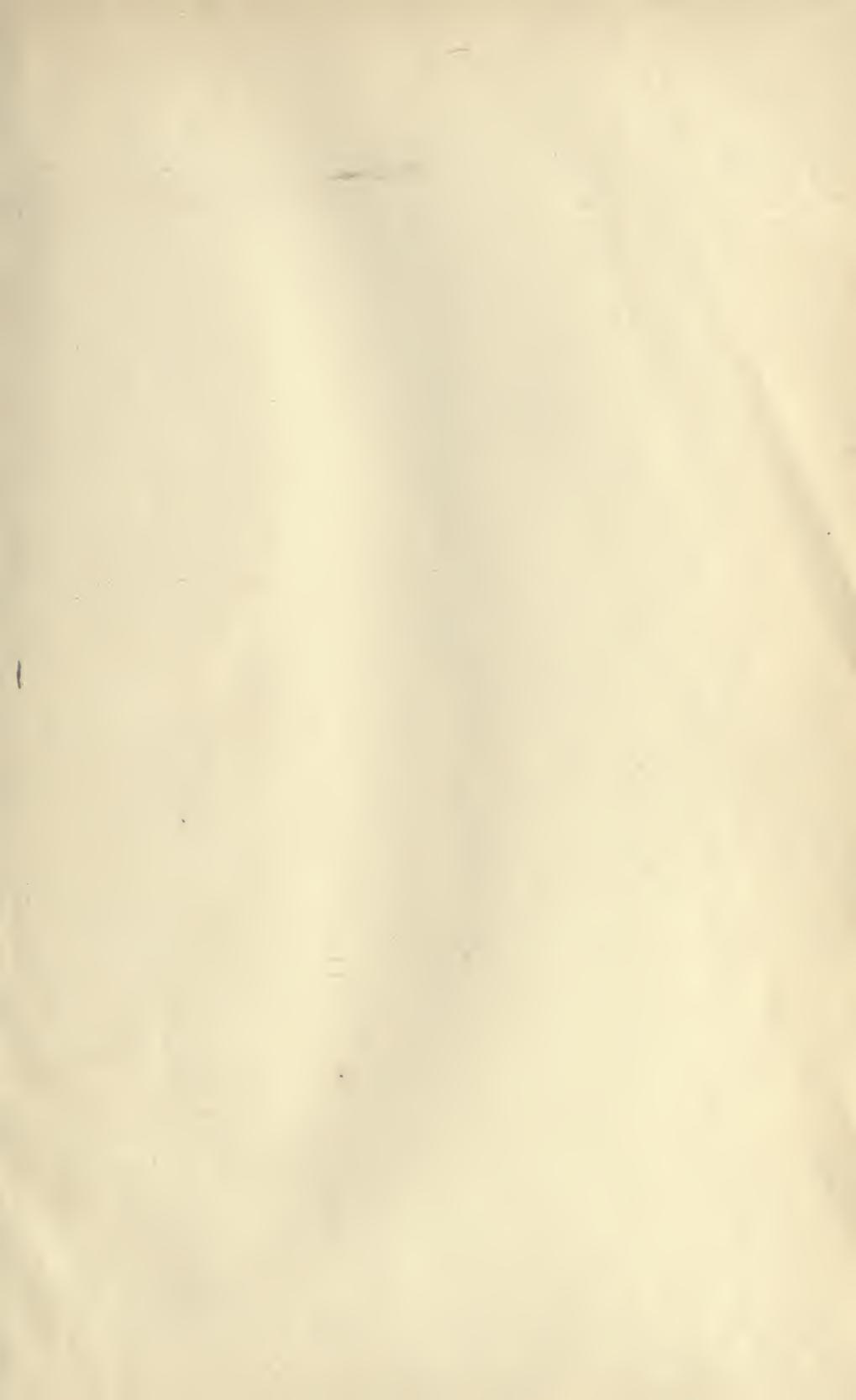


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and the author's name. The book is  
not a collection of his best work, but  
is a very valuable one. It contains  
the 1890 "Papers" complete,  
as well as a number of his later  
articles, including some which  
are not elsewhere easily accessible.  
It will be of great interest to  
those who are interested in the  
history of the development of  
the science of psychology.













ARGUMENT  
BEFORE THE  
COMMITTEE ON COMMERCE  
OF THE  
SENATE OF THE UNITED STATES,  
IN OPPOSITION TO THE  
REAGAN BILL,

FOR THE  
Regulation of Inter-State Commerce by Railway.  
BY  
G. R. BLANCHARD.

*Washington, Tuesday, February 11, 1879.*

NEW YORK:  
MARTIN B. BROWN, PRINTER AND STATIONER,

—  
1879.



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NEW YORK:

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Mr. CHAIRMAN—The proposed act which your courtesy enables me to discuss at this time and in this manner, is H. R. 3,547, introduced in the Senate on the 12th of December last, and is entitled “An act to regulate inter-State commerce and to prohibit unjust discriminations by common carriers.”

I object first, that its title is misleading and erroneous.

I hope to show that it will not regulate but confuse inter-State commerce; that it will encourage transportation discriminations that do not now exist, while prohibiting none of importance that may exist; and that it does not, as implied, apply to all common carriers.

The language of the first section and the entire act limit it “to persons engaged alone, or associated with others, in the ‘transportation of property *by railroad*,’ etc.

This language exempts corporate as well as private steam-boats, coal or other barges, or tows, between inter-State points upon the Western rivers. It exempts the like steam, sail, or towed vessels and barges between the inter-State cities upon the great lakes. It exempts steam or horse canal-boats upon all inter-State canals; and it can not, in any event, be made to apply to the greatest of our artificial water-ways, the Erie Canal. It exempts all carriers running upon inter-State slack-water navigation. It exempts all steam or sail vessels trading between all points of our vast frontage upon the Atlantic or Pacific Oceans and the Mexican Gulf. It exempts corporate stage, and turnpike carriers and pipe lines, and it is not clear as to the express companies:

If, therefore, it exempts each of the classes of water carriers, it, of course, exempts any combinations of any two or more of them. The carriers upon the lakes may combine

with those upon the St. Lawrence River and Erie Canal, and those upon the Erie Canal may, in turn, combine with those upon the Hudson River. The carriers upon any one of the Western rivers may combine with those upon any other, and the two with those upon the gulf and ocean ; and these combinations of lake, river, canal, and ocean carriers may make or unmake rates at their own wills, without notice, regulations or penalties, while the railways, that meet only the conditions so forced upon them, are sought to be legally crippled in their competition with such rates and conditions ; or, if they meet them, palpable losses of local revenue stare into their ledgers.

Is not this the clearest discrimination ?

Again, if inter-State railways lose their through traffic in whole or part, because they do not care to bring their local rates down to water levels, as required by this act, the water-carriers will in many cases increase the through rates, because their rail competition has been thus removed ; and the railways will, in turn, advance their way rates to compensate for the through loss. Is it wise to force, by enactments, such alternatives and results upon your railways and the public ? And, as they have not existed before, is not this a step backwards ?

Although these questions are important in themselves, as presented, I deem them yet more unwise and unjust when combined with the fourth or pro rata section of this act, which I shall consider more fully later on.

I also desire to now call attention to the further important fact, which I shall consider more fully elsewhere, that any one or more of these water-carriers through different States may combine with any one or more railways in one and the same State, and that the combined rail and water line so formed is beyond the reach of this act. Is not this added injustice, particularly if such combination is national and controlling ?

Natural, permanent, and controlling channels of transportation have been lavishly provided by the Almighty for the convenience, needs, and protection of our people. The Ohio, Missouri, Mississippi, Arkansas, Cumberland, Tennessee, Red and other navigable rivers penetrate its central and western interior. The Atlantic Ocean and the Gulf of Mexico, in connec-

tion with those rivers, and the improvements of their common mouth by the aid of Congress, protect its eastern and southern borders, while at the north the lakes flowing eastward through the St. Lawrence River are also aided by man's handiwork, in the Erie Canal, to unite their waters with those of the Hudson River. The whole forms a navigable water belt around the principal producing, consuming, and industrial area of the Union, which, when combined, affords a total transportation protection greater than law, because it is mainly divine rather than human. These watercourses absolutely limit the charges of the railways competing with them in all the essential through or national features which this bill is intended to reach, and I believe that wisdom the most profound which leaves this contest between iron rails and the currents of rivers and lakes and the ebb and flow of tides to those unfailing results which that natural rivalry has not only heretofore achieved but will continue to achieve more speedily, more surely, and more equitably than law, and quicker in the absence than the presence of enactments like this.

As all the carriers upon all these controlling routes of water transit are free, I will apply myself, as does the act, to the railways.

Divested of necessary legal verbiage,

SECTION "FIRST" PROVIDES:—"that between points in different States, or to and from foreign ports, it shall be unlawful to charge other than uniform rates to all parties for a like and contemporaneous service ; prohibits discrimination in carrying, receiving, delivering, storage, and handling like property, or in its transmission, and that no unnecessary break, stoppage, or interruption, or bad faith shall avail to avoid or evade continuous carriage from point of shipment to destination."

Upon the general subject, I first desire to say : It will doubtless be conceded, as a starting point, that the principal applications and much the greatest volume of tonnage and value which this bill, should it become law, can apply to or influence, will be that between the Mississippi Valley and the Atlantic Ocean. It is, therefore, necessary to state that upon that great traffic the railway through tariffs, both east-

ward and westward, are usually first fixed from Chicago in the following manner :

Consideration is given to foreign and various domestic values ; the relative rates in their season of steam and sail transportation, *via* the Lakes and St. Lawrence River, or Erie Canal, or both, together with their handling, transfer, and other charges and risks, the total of which absolutely limit the standard of rail rates during their season to a low point.

The application of the results so ascertained and their competitive water necessities are inexorable in their effects upon the railways within periods ranging from seven to eight months in each calendar year. Then, if the rail rates are fixed unduly high in the winter months, such action simply reduces railway revenue by keeping back the profitable volume of traffic until at or near the reopening of navigation, when rail rates must meet water, or the alternate water outlets are again ready for the forwarder at their cheaper charges. Excessive winter rates would also crowd the railways just before the close of navigation, to the loss of subsequent traffic. The policy of low winter through rates has for these reasons become established.

It has, then, become a further rule—required by the local interests of communities, fixed by the laws of trade, and finally by railway agreements—that between other common inland points and New York, in both directions, the rates are fixed at or about the same rates per mile upon the average or approximate distances of the different lines to New York, with bridge tolls, transfers, etc., added, as those limited and established in the manner stated between Chicago and New York. For example, the tariff rates from Indianapolis to New York always bear a fixed relation of difference less than from Chicago; and those from St. Louis more, plus its bridge or transfer charges.

Like laws of mercantile regulation, markets, export or local facilities and quantities, and finally railway agreements, fix agreed commercial differences in rates from these various western points to Boston, Philadelphia, and Baltimore, as compared with those charged to New York.

The carrying charges are therefore, and must from natural causes continue to be limited, and can not be beyond or as

much as those which in their absence would be deemed fair and reasonable, and are always below the rates for like distances, articles, and speed by rail anywhere in the world. So potent are these facts, that it is within the power of, and is often the case that any combination or independent action of a few sail vessels at Chicago can at any time in their season of navigation procure rates from the owners of an equal capacity of Erie Canal boats from Buffalo to New York which, added to their own rates to Buffalo and the transfer charges, will, and do, not only in theory, but in actual practice, fix and regulate the entire eastward through maximum freight rates upon all kinds of grain and many other articles, not only from every point upon the lakes, but from many of those upon the Mississippi River, and under the operations of the rules, agreements, and instances cited above, they also fix them from every prominent Western forwarding point to all the export cities upon the Atlantic seaboard.

Can any safer limitation or check be provided by law than the inflexible provisions and limitations nature so enforces in an uncontrollable rivalry?

In like manner, but in lesser extent, the lake rates from Duluth establish the starting and governing rates for the farther Northwest during the corresponding lake season.

With like arbitrary power, in varying measure, the Mississippi River regulates, restrains, or influences freight charges on a large aggregate of various commerce from all the points upon its banks between the falls of St. Anthony and New Orleans. The Ohio, Missouri, Arkansas, Illinois, Cumberland, Tennessee, and Red Rivers perform not only similar public services in the West, upon questions of through rates to the gulf or ocean, but each and all of those water-ways apply barriers to excessive local charges. This combined wealth of water highways forms an aggregate of parallel rivalry unknown in other countries, and so restrains not only through but local rates to standards which have been constantly decreasing for the past ten years; which can never exceed the water prices, risks, and charges, and which afford the people a stronger and juster security against extortion or abuse than any statutory enactment.

I have so far endeavored to establish three important propositions.

*First*—That all inter-State water carriers will be as free after the passage of this act as now to make and alter, or rebate or enforce their public tariffs or private agreements, and that it is unjust to exceptionally restrict parallel inter-State railways in their rivalry with such water-ways.

*Second*—That the extent of navigable water highways circling and penetrating the country are lines of national defense against transportation extortion or abuses, upon which any man can freely transport any cargoes.

*Third*—That not only in theory, but in practice, through railway charges upon the great bulk of our products in tonnage or value are fixed and limited by those free avenues and methods of conveyance.

I believe I can now establish a fourth important, and indeed an essential, proposition. That more than one of the States and their controlling railways are so situated geographically and in law as to be also exempted from this act upon a commanding percentage of their tonnage ; and that by reason of such location and exemption they enjoy a power sufficient to enforce further essential limitations upon the rates of other railways which may fall within the provisions of this act.

The report accompanying and referring to the act uses the following language :

“ Congress would not thereby interfere with or regulate “ the purely internal trade of a State ; something concededly, “ and as a matter of course, not within its power.”

If therefore all railway companies were situated alike geographically as to the limits or borders of States, the objections to the first section of this act would perhaps be less convincing, but the exceptional locations render the operation of the act, as at first claimed, unequal and unjust.

As prominent and wealthy a railway as any in America is the New York Central. Its entire main line and branches, and all the subsidiary transportation companies, elevators, warehouses, etc., controlled by it as a corporation are

within the limits of the State of New York, and amenable in this regard only to the laws of that State and those of trade.

Its eastern terminus is at New York, and whether that city is reached *via* its Harlem or Hudson River divisions south of Troy or Albany, both of those divisions are also in the same State. It has Hudson River termini for summer river traffic at Albany, and at Athens, also within the State. Its western termini are all within the state at Suspension and International Bridges and Buffalo.

Its principal competitors, forming a parallel water-way for its entire length between New York and Lake Erie, and exempted, as before shown, from the operations of this act, are the Hudson River and the Erie Canal, and both of those free rivals are entirely within the State's geographical or legislative limits. Its routes to and from Lake Ontario, both by its own and connecting lines, which control or influence at different seasons of the year the commerce of New York City with Canada, *via* that lake, are all within the State. Its rates between all the points named and those intermediate are all, therefore, made, offered, accepted, collected, and rebated, changed, or enforced within the State.

Here, then, is one of the most powerful and influential railway companies of the world, and aside from coal, the largest miscellaneous tonnage carrier of our country, uniting, *via* its line at Buffalo, the domestic and foreign commerce of the great lakes with the port of largest traffic in the Union, solely by its own rails or by the use of a connecting river, second only, as a tonnage highway, to the Mississippi River; and that railway company is, by the conceded language of the report, by National law, by State law, by custom, and by equity, upon all its traffic not rated, contracted, and carried through, free and exempt from the obligations, operations, and penalties of this bill; and the same company may, perhaps, be enabled, entirely in accord and consistent with its provisions, to reduce the great majority of its traffic to this local or State basis. It may charge more or charge less between Buffalo and New York and all way points upon its lines, or to different points. It may make agreements with regular, responsible, and large forwarders or

receivers, upon special terms, in accordance with mercantile principles recognized throughout the world, and upon terms not accorded to occasional consignors of questionable credit and limited and uncertain tonnage. It may or may not compete with the Erie Canal or the Hudson River, either or both, at its option. It may compete in summer and advance its rates in winter. It may quote competitive rates in summer and continue them in winter, or it may make special annual contracts at the average of summer and winter Erie Canal and Hudson River rates and risks.

It may discriminate against those who discriminate against it, and favor those who foster and encourage its enterprises. It may divert the tonnage of Canada to its route *via* Lake Ontario and the Hudson River, or entirely by rail, but away from the St. Lawrence River, to our good or to our harm, as a State or a country, and at rates as varied as articles, circumstances, seasons, policies, and rivalries warrant. Yet, whichever of these courses it may adopt or discard, or whichever may be wise or be hurtful, as a State railway, and in these respects a purely local carrier, it is exempt from the restraints, limitations, and penalties of this bill, more clearly and securely than if it was so specified in the act itself, and is subject only to the wise views of its management, or the enlightened legislation of the State which created it.

In this commanding aspect of the case, is not its situation national and controlling?

It may not only do or leave undone some or all of these things for itself, but whichever policies it pursues or omits to adopt, or howsoever often it inaugurates or changes them or others, the results of its action are so far-reaching, the profit margins of commercial transactions so small and uncertain, and the mercantile public so alert, that its actions also limit the rates of the Erie Railway or affect the Pennsylvania or Baltimore & Ohio Railroads in the charges which they can make; and the three latter will be compelled, if they take freight at rates required by the action of the New York Central, to become amenable to this law which it is proposed shall involve their hurt, another's practical exemption, and the good of no one. I say the attitude of the New York Central Company in this respect is a national one, because it so

makes rates to our chief city, New York, upon the entire immense traffic received by it from and through the lakes from Buffalo as opposed to the Erie Canal, which is also free from the restrictions and penalties of this measure, and when that policy is decided, its application to the millions of lake tonnage makes its importance national, arbitrary, and final.

Here then, are two, and the largest two, of the miscellaneous tonnage carriers of the Union, the New York Central Railway and the Erie Canal, exempt from this act or any modification of it that can be devised upon lake traffic.

I now desire to apply this illustration. The company I have the honor to represent competes with the New York Central Railway at Rochester, Buffalo, International and Suspension Bridges, and has a lake outlet at Dunkirk, and our principal Eastern terminus is at Jersey City, thus having its Eastern and Western termini in different States. Upon our shorter route, in comparison with the New York Central, the Erie line passes through 42 miles of Pennsylvania and 30 miles of New Jersey. It may be justly urged that freight contracted by the Erie Railway in New York State for delivery in New York City, and merely passing through Jersey City, may be as free as that of the New York Central, but the report accompanying this bill sets up the distinct claim, and enforces it by excessive penalties, and urges it by voluminous references, that because of our passage through various States, the through competitive tonnage of the Erie Railway is therefore amenable to national regulation as to quantity, rates, speed, handling, storage and delivery, while the New York Central Road, although a longer line, but fortunately for it, entirely within the limits of one, and in this respect, sovereign State, is free from this proposed law in each and every feature which makes or unmakes its commercial influence and success, or marks the boundaries between profit and loss not only for itself but for others. It therefore need only invoke the application of this act to its rivals not so situated, while shielding itself in security. It is true, that if the New York Central Company seeks a Boston traffic from Buffalo, it will be governed by this act, but it is more free at New York than it is bound at Boston, and hence it will clearly discriminate against Boston and in favor of New

York. This is the beginning of the many geographical discriminations which, instead of being avoided, are stimulated and encouraged by this bill.

The enlarged application of this forcible illustration renders it yet more national. For farther example—Because the lines under the control of the Pennsylvania Railroad, from Erie or Buffalo to New York, pass through the States of Pennsylvania and New Jersey, they become amenable to the logic of the report and the provisions of the act, and the route and outlets that free it from this act ; and leave it to the pursuit of its business as freely as other avocations, from Erie to Philadelphia, because its lines between those points are then all within the State of Pennsylvania, which is acknowledged as supreme in this respect. This clear result then follows with that Company : It can pursue an inland, seaboard, or foreign freight policy from the lakes to Philadelphia at will, without national intervention or control, because of its State isolation, as the New York Central can to New York. This ability of the Pennsylvania Railroad from the Northwest is supplemented by a like ability from the Southwest, in the use of its Ohio River connections at Pittsburgh, so that, with Philadelphia for its focus, and Pittsburgh and Erie as its starting points, its large river and lake tonnage are freed from the proposed national legal supervision to Philadelphia, inasmuch as it is not alike free if such property comes to New York, because it must then pass through New Jersey. This second instance of incentive and interest to discrimination will be found in the fact that this great company will then have an object not before created to favor Philadelphia, and oppose New York. The like facts have a yet more forcible aptness in connection with that Company's petroleum traffic, which is found, refined, shipped, sold, unloaded, and exported mainly in Pennsylvania, while our own petroleum traffic originates in the same State and is exported from New Jersey.

Going farther west, the Baltimore & Ohio line has a lake outlet at Sandusky ; but in its passage east to tide traverses three States, like the Erie Railway. We find here the singular, but further controlling facts, that two of the Trunk lines will enjoy practical, conceded, and legal immunity through this act, from any of its provisions on the leading eastward

bound articles of petroleum, grain, flour, provisions, and some tobacco and cotton, while the other two are stranded upon its penalties. If this were the object of the bill, its discriminations could not be more thoroughly fulfilled.

The foregoing argument of comparison between the status of the Erie and its next neighbors on the north and south on eastward general freights has an equally forcible application to the coal traffic, westward as well as eastward bound, because the Pennsylvania Railroad is situated with like freedom upon that tonnage, which is 60 to 65 per cent. of the local traffic of the Erie Railway.

The through westward coal traffic of the Pennsylvania Railroad Company from all the important points upon its lines to the lakes is by the way of the city of Erie, Pennsylvania, the starting and termination points and the whole route being in the State of Pennsylvania, and therefore exempt from the operations of this law. Upon its entire eastward coal traffic to tide at Philadelphia it is also free to impose such various charges, such wise restrictions, such a sliding scale of rates upon quantities, such rates to justify increased development, such rates as justify mining companies in furnishing equipment, or such other wise acts or variations of policy as the acknowledged wisdom of its management has demonstrated its fitness to decide in the development of that great estate.

Upon the Cumberland or bituminous coals of Maryland, the Baltimore & Ohio Company must pass through two States on its way to tide, and through two more States if it undertakes to compete by rail at Philadelphia. As opposed, therefore, to the eastward soft coal traffic of the Pennsylvania Railroad, the Baltimore & Ohio Company is at a disadvantage which does not now exist, and that disadvantage will be the result of the additional discriminations fostered by this enactment.

Here again the unfortunate position of the Erie Company, under the unequal operations of the act, becomes apparent. Our coal traffic originates entirely within the limits of the State of Pennsylvania. If destined westward to the lakes at Buffalo or Dunkirk, it originates at Carbondale or Coxton in Pennsylvania, or if eastward, to the Hudson river,

it is delivered to us at Hawley and Honesdale, also in Pennsylvania, passing thence through portions of New York and New Jersey to tide at Jersey City or Newburgh, N. Y., and, contrary to the stated exemption and freedom of the Pennsylvania Company, at Philadelphia, our coal traffic in both directions would be limited, embarrassed, or discriminated against through the plan of this act.

I regard it as a marked commentary that notwithstanding the freedom of the Pennsylvania and New York Central Companies from this act in the essential matters cited, the wisdom of their managements and their forethought for the national railway interests, decide them here and at this time to oppose the bill as a whole.

There are numerous other instances where the operations of the act are burdensome upon one and free upon another carrier. For instance, the Milwaukee & St. Paul Company may make rates from points in Wisconsin to Milwaukee, which, if made to Chicago, would subject it to this act; hence the creation of a new interest to discriminate in favor of Milwaukee and against Chicago. Instances like this might be multiplied throughout the Union, but seem unnecessary. For further and important, but different example, I beg to cite: The act can not be made to apply to any of the railways of Canada, either directly or inferentially.

Assuming, therefore, that the Great Western Railway of Canada, or the Buffalo Branch of the Grand Trunk Railway—both starting from the Detroit River, and terminating upon the Niagara River opposite Buffalo—see fit to take Western produce for delivery to the Erie Canal at Buffalo, they are both clearly free, and so is the canal, from this act.

Assuming, as constantly recurring facts, that the citizens of Detroit or Toledo desire to make like use of the Lake Shore or Canada Southern Railways, between Detroit or Toledo and Buffalo, upon property to be delivered at the latter point in competition with the two former, either to the Erie Canal or to the New York Central, Erie, or Pennsylvania Railways, what possible good can come to any State or national interest by placing before the Lake Shore Railway the discriminating alternative that, if it does not accept such competitive business, it will surely lose revenue and labor for

the people and interests of this country, or if it does carry the traffic at these rates it must bring its whole traffic for three hundred miles in like articles at the same time down to the level of that single transaction ?

The international example last cited has another and more forcible application. The Grand Trunk Railway terminates at Sarnia, upon the Canadian bank of the Detroit River, from which point it connects westward both by sail and steam vessels with all points upon the lakes, and eastwardly with ports upon all oceans of the globe. That line, and its branch from Buffalo *via* Toronto, are entirely within the Dominion of Canada to Montreal and Quebec, and, of course, free from the operations of this act.

If the New York Central, the Erie, or the Pennsylvania Company sees fit to compete, either at Cleveland, Buffalo, Erie, Toledo, Detroit, Suspension or International Bridges for the carriage of a traffic which would otherwise pass through Canada upon the route of that railway, what reason exists why Congress should force upon them the alternative to lose it, or in the event that they carry it against such foreign competition, pull down all their rates to the levels established by a foreign corporation ; or in the event they do not carry, to raise their local rates, as will be done in most instances, to compensate for this and other like losses. Need I go further, in citing the clear discriminations which will result from the passage of this act ?

I pass now to some of the detail of the first section, as subdivided under the following heads :

*To or from any Foreign Country.*—For the reasons before cited, it is clear that the New York Central Company will not be influenced by the act in its rates between Canada and foreign ports *via* New York, in either direction, whether locally *via* Lake Ontario ports, or from Canadian railways at Suspension and International Bridges ; while the Erie Company may fall under the act, because it transports its like tonnage between Suspension and International Bridges and foreign ports *via* New York, but passes the same through portions of three States. For this additional reason, this company would be largely discriminated against

by this bill, not only upon export freights eastwardly, but import freights for Canada westwardly.

Further, Canada has cheap outlets during eight or nine months of the year *via* the St. Lawrence River. When that channel is closed the Grand Trunk Company, with its connections and branches, are subject to no such restrictive act, but fostered by the parliamentary policy of the Dominion, and being built upon five per cent. funds, stands ready to receive and transport traffic in both directions in competition with that river or the American railways. If the New York Central and Erie Companies secure the transportation of Canadian traffic *via* New York, can it affect, in any sense, the States of Pennsylvania and New Jersey injuriously? The only effect is that to the extent we increase our general traffic by the addition of this business, we are required to enlarge our work and repair shops, our terminal depots, power, men, and materials; and whether we increase or decrease net results, the whole is a national advantage, unless in case of loss this bill is specially designed to guard the investor. What possible good could come from any form of legislation which, even if the New York Central Road was liable to the act, could limit or restrict the rates of the Erie Railway upon this Canadian traffic, or make the rates charged thereon, in that event, the measure or standard of any other inter-State charges whatever? Is it not advancing every American interest and industry to leave the competition for this traffic against the routes referred to entirely untrammeled, particularly as Canadian carriers can enter upon American lakes and connect with American railways without such restrictions upon their action?

*"Uniform Rates to all Parties."*—I respectfully submit, whether or not it is wise national legislation to enforce by law the same rates upon a shipment of 500,000 bushels of low grade wheat upon English demand, as for one car load of wheat of higher quality, designed for milling at a local point into extra flour? Yet such is the operation of the bill if the circumstances attending their transportation were alike. Is it wise, mercantile, or customary to enforce exceptional legislation upon common carriers, to require them to give the same rates upon one car-load of flour from Duluth to New York, consigned to a retail dealer, as

upon 10,000 barrels of flour between the same points, destined for consumption in England, and which might otherwise seek the route *via* the Grand Trunk Railway or the St. Lawrence River at their fixed rates, and if it could be secured for American interests *via* New York, at a price which their managers might determine profitable in the annual aggregate of their traffic? What principles can justly enforce a like rate upon all articles from all consignees and forwarders, and from the same points of shipment to the same destinations within this and other countries, ignoring the circumstances of quantity and regularity, and large tributary and permanent interests which may be affected in the one instance, while in the other it may be a transaction complete within itself.

Again, in many instances, certain parties are not only large receivers, but forwarders; as, for instance, the flour mills of Rochester, receive wheat and forward flour. Is it wise, customary, or just to enforce upon a carrier conditions which require it to transport an occasional car load of wheat to Rochester or an isolated shipment of flour from that city at the same prices as in the first instance suggested? Numerous other equally effective cases may be cited; as, for instance, large tanneries, who are receivers of bark and hides and forwarders of leather, in comparison with an occasional shipment of the same; large manufacturers of agricultural implements, who are large and regular receivers of lumber, coal, etc., and forwarders of the manufactured product; as compared with occasional dealers in those articles; or large manufacturers of cement, who receive coal and stone, and forward their product; or large manufacturers of machinery, who receive metals, coal, lumber, etc., and forward the manufactured forms of material. Elmira, N. Y., is a large manufacturing point. It possesses rolling mills, iron furnaces, manufacturing establishments, etc. The coal with which they are mainly supplied is transported from Carbondale, in the State of Pennsylvania. Is it just that because this Company decides to transport the annual supply of coal for those establishments or the reformatory and asylums located at that city at a reduced rate, it must transport it all at like rates, if a citizen wishes a car load for home use?

Yet further: Manufacturing establishments at certain points have exceptional facilities, in part their own and in part those of the railway. As, where a railway has furnished the iron, ties, and labor, and their patrons, have supplied the right of way upon their own or other property, and maintain the same. In other cases, consignees or forwarders own or control their sidings and buildings for loading and unloading their merchandise. In certain other cases, the railway companies, while they construct, own, maintain, and prescribe the uses of exceptional switches, pay for the same specific or other rentals, under conditions of an exclusive character and under various forms of contract which, antedating the passage of this act, will govern the relations of the parties.

Still further: All large railways have well-considered and legally-executed contracts of long standing, governing their various relations to large forwarders and companies. The Erie Railway Company has such a contract with the Delaware & Hudson Canal Company, which provides for the consolidation of some seven pre-existing contracts, and in that consolidation provides for guarantees of interest, construction of branch lines, the furnishing of cars, mileage upon the same, and rates of transportation. The Constitution of the United States guarantees the inviolability of contracts ; and under that contract we have been and are now charging certain specific rates between Carbondale in Pennsylvania and local cities and towns in New York, as well as to Buffalo for all points throughout the West by lake and by rail. It provides for a participation by the carrier in the gross sale prices of the coal, and the latter are left entirely to the coal company. It, therefore, may and does happen that the results to the railway vary at points of different distances with the varying sale prices of coal, with the competition in its sale, with the quantities delivered, with the ability of the consignees to furnish trestle works for unloading, or their credit, whether the cars are furnished by the Railway Company or by the individual, and the manner in which they are loaded, and whether the coal be in box cars or coal cars.

It has now transpired that, in the recent improvements to the gauge of the Erie Railway, we desire to secure other large forwarders of coal from Carbondale, Pa., who have heretofore

chosen other routes. The local receivers of coal upon our line make no complaint, and the new coal companies desire only the rates they formerly enjoyed *via* other routes. Does this coal interest, nearly every ton of which is inter-State, and is 60 per cent. of our local tonnage, and 40 per cent. of our whole tonnage, demand this protective legislation?

If we carried the coal of the new companies at rates differing from the old, would we be amenable to this act; and if by adhering to the old contracts we lost the new, would it not work the discrimination against some shippers which the law claims to avoid?

The same is true as to coal destined eastward to tide over our railway under long-standing contracts with the Pennsylvania and Delaware & Hudson Coal Companies, and the agreements are as desirable to the coal companies as the railways.

I have no doubt, with my general knowledge of the other great transporting companies of the country, that like complications and considerations are involved upon all their lines, in greater or less measure, and upon various classes of traffic.

*The Prohibition of Discrimination in Carrying.*—The carriage of the same and various classes of merchandise are subject to different restrictions; as, for instance, upon the approach of the close of navigation upon the lakes or canals certain forwarders volunteer the payment of additional prices for despatch. If all the facilities for special despatch which this Company possessed were absorbed by the extent of the terminal facilities, though we had cars in plenty, and those cars were demanded for like shipments, it would be clearly impracticable and impossible to furnish the same with "equal expedition." This is an illustration drawn from present experience.

*Receiving, Delivering, Storing, and Handling.*—Certain freights are received upon the distinct understanding that the property shall await the convenience of the carrier, and a rate is made accordingly. This Company has now 1,000 car-loads of grain and 300 cars of iron ore stored at Buffalo, for transportation at lower rates, based upon

our convenience in its movement; and it was a wise provision, both for the owner and the railway, because otherwise the snow-storms which blockaded that point would have created loss to the owners, or had the railway been required to forward them with current despatch, a loss would have resulted to it beyond the differences of rates. Will it not be possible, under the act, for a troublesome forwarder to tender freight for quick despatch subsequent to those contracts, and demand a preference in the transportation of the same over that contracted at such convenience, and if he tenders the current rate therefor, does he not thus remove the option from the carrier to the patron?

If such freight has been in elevator at Buffalo for a month, waiting the carrier's convenience, and it is received, forwarded, and delivered in the same trains that contain current shipments, at higher rates, from Buffalo, is it not "like and contemporaneous" service in the meaning of the act, yet at different rates, and therefore a violation of the act; and if it is at lesser rates than the current proportion of the higher winter through rates from Chicago, is it a further violation?

Freights are received, delivered, and handled at stations under various conditions:

*A.*—At the railway's station-buildings and handled by its employees.

*B.*—In car-loads, upon the railway's sidings, to be there unloaded by consignees or the employees of the railway.

*C.*—To be unloaded by the railway or consignees upon sidings privately owned, as at manufacturing establishments.

*D.*—Or upon sidings owned jointly by private persons and railways.

All this variety of service involves differing charges, as rates, agreements, quantities, regularity of traffic, car supply, and various other conditions may decide to be wise.

No human provision of this or any other act can adapt it to the varieties of such instances, which commercial usage has justified and will continue to require.

This Company makes deliveries about New York harbor at some fifty points of delivery, including all ships, sail and steam vessels, located at all the docks, vessels at anchor in the streams, warehouses, private and public; and it is not practicable, inasmuch as they are not all like deliveries, to provide for them within the meaning of the act.

Upon through bills of lading, from interior western points to foreign cities, the trunk line carriers are required, in the very nature of the traffic, to hold certain freights for the completion of lots. If 1,000 boxes of meat were sent from Chicago to Liverpool, and it arrived at New York on Sunday, and the connecting steamship line had no steamer until the succeeding Saturday, the railroad company is required, under its bills of lading, to hold the same for its steamer. Does not the act require that we furnish like storage facilities to the occasional shippers of 25 boxes of meat, if it be a car load to each, and so embarrass the operations of the Company? Or, if our seaboard warehouses be filled with partial lots of property because of failures of Western companies to forward remainders promptly; under the broad authority of this Act, can not consignees of lesser lots which *are* complete demand the free storage of their property an equal period? How is this practicable, and if not practicable, why legislate upon it?

It is also customary, as for large flouring and other mills, manufacturing establishments, foundries and furnaces, to furnish facilities upon the grounds of the railways, for the storage of the large, regular, and current traffic of such patrons. The act requires the grant of like facilities to all who elect to so demand, upon property which may have passed through parts of two or more States, while they cannot enforce it upon property received from points within the same State. Is not this another discrimination? and, under such circumstances, would not the New York Central enjoy an immunity at New York that we could not possess at Jersey City in its rules and regulations for the storage of and elevation of all kinds of freight and grain?

*With Equal Expedition.*—Certain forwarders are willing and stipulate to pay different prices for various degrees of expedition, which are fixed from time to time, according to

the changes of markets, the ability to supply cars, or load or unload the same, or the nature of the property. Special trains are run at increased speed, and rates for special purposes; as, during their seasons, for peaches, cheese, and apples.

Again, coffee is worth 12 cents per lb., and sugar 6 cents. Railways charge at the same rate for their transportation, but in the event of detentions or accidents, would not railways be justified in forwarding the double priced article the quicker, for the purpose of terminating its greater risk?

#### SECTION "SECOND" provides :

That "transporters shall not allow any direct or indirect " rebate, drawback, or other form of advantage."

This seems based upon the theory that all such allowances are discriminating or pernicious, against which I maintain that many of them are necessary and beneficial, and in a majority of instances do not discriminate.

I concur cordially in the object sought, so far as unjust discriminations are made against shippers of like quantities and articles between the same points. To apply this feature of the act, in its localized aspects, to our own railway, I cite—

*A.* The drawbacks allowed annually by all carriers upon coal consigned to the lakes.

Lake navigation closes about December 1st. The larger coal companies and carriers would not be justified in mining the coal, carrying it, and storing it at Buffalo or Erie at the higher rates prevailing in winter, involving loss of interest and deterioration upon the large aggregate delivered.

Furthermore, the equipments provided by the railways could not carry it in sufficient quantities at about the opening of navigation; and to save large additions of cars, which would be idle during winter months; to transact the larger annual business with a smaller number of cars; to do so with regularity; and to keep miners more constantly employed; all the railways to the lakes agree that coal sent to their lake docks during the winter months, and charged and paid for at the winter rates, shall receive a rebate or drawback upon the opening of navigation, to make the rate equal to that fixed at such opening. Does not good accrue to

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every interest from this well-considered action?—yet the proposed act would render it illegal and discriminating. It is true the act would permit the charge made at the lower through rate, but that would bring all the local winter charges down to the navigation level of summer through rates, without cause or reason?

B. We think we are entirely justified in saying that, aside from the drawbacks which we condemn, upon the great through traffic, and which we hope a bill can be so framed as to reach, nine-tenths of the remainder are based upon valid and just contracts, considerations of quantity, regularity, the supply of the raw material, and the shipment of the perfected product.

For example: A manufacturing establishment is erected in New Jersey, contiguous to New York. It desires in each and every month 50 car loads of supply, and will forward 25 of product. To be assured of such quantity and regularity, by which station, train, and other expenses can be regulated with certainty, is a valuable railway consideration, and if after providing facilities upon such assurance, the railway fall materially short of the assured traffic it would disarrange its plans and increase rather than decrease the expenses provided to meet them. A new siding is, for instance, provided, a new storehouse erected, an additional clerk, and more laborers required; and to secure the railway for this outlay, and, at the same time, provide a penalty for the non-fulfillment of such an engagement, it has become a wise custom to charge a specific or local rate, and at the end of fixed periods refund to the contracting party an amount justified by the volume and regularity of the traffic; or impose the penalty of withholding the excess in case of his failure to comply with the terms of his agreement. This could still be done on State business, but it would be forbidden on inter-State traffic by this act, and would not discrimination thus again ensue? I venture the assertion that a large majority of all the manufacturers of the country would choose such arrangements, establishing fixed rates, a specific contract, and terms of absolute certainty in the transaction of their business, rather than be governed by the fluctu-

ating rates which would practically follow the passage of this act, if its provisions were carried out.

In 1875, when an act essentially similar to that now before your committee was before the New York Legislature, I showed to the Committee on Railways that in the decade from 1865 to 1874 there was an increase from 1,761 to 3,411 manufacturing and other establishments upon the line of our railway, or 93.7 per cent., due largely to the encouragement of rebates and drawbacks above stated, and which this bill prohibits. All classes of trade were benefited rather than discriminated against, as shown by the fact that the increases had been as follows :

Agricultural implements .....	20	to	38
Blast furnaces (Forges).....	15	to	35
Boots and Shoes.....	23	to	55
Cabinetware and Furniture .....	59	to	111
Chemicals.....	20	to	46
Cooperage .....	59	to	94
Cheese factories.....	18	to	72
Distilleries and Malt houses.....	67	to	107
Flouring mills.....	146	to	174
Lumber manufactories and Planing and Sash mills .....	139	to	300
Saw mills.....	229	to	330
Machine shops, Iron foundries, Boiler works, etc.....	50	to	110
Paper mills.....	14	to	23
Silk factories.....	14	to	31
Tanneries.....	89	to	146
Tobacco and Cigars.....	27	to	108
Woolen mills.....	12	to	18
Wagons and Carriages .....	74	to	147

What mercantile law, what equity and what necessity, renders it wise for railways to refuse rebates to these large manufacturing establishments, to enable them to meet the varying conditions of trade and at the same time to protect the revenues of the carriers against abuse by holding in their hands cash penalties for their violation until the contracts have been completed? Why single out the

transportation interests and eliminate from that interest alone the wholesale or quantity principle which is recognized in every other department of human traffic, and which even the government justly insists upon in its purchases of arms, ammunition and supplies of all kinds? Does not every other trade make a reduction of its marked or public rates to large purchasers, for cash or superior credit; and are those reductions not varied upon different articles; and is that deemed mercantile discrimination? If, for further example, at any station now upon our line, some one and the same person now receives coal, lumber, and lime, and sends away a few car loads of apples, grain, and miscellaneous barter, and a company, with large capital, locates at the same point to make articles requiring the consumption of large and regular receipts of lumber, coal and lime, and the regular exportation of manufactures, would it be unjust to the former to give the latter a concession by rebate or drawback in consideration of such quantity and regularity? Would not the interests of the railway and the company be stimulated by a concession to the latter through the establishment of such works, the advance in real estate, and the bringing in of increased population? And if so, what wisdom or mercantile principle can justify a law which forces the carrier to avoid such drawback or rebate?

Again, assuming in store at Buffalo 100,000 bushels of wheat, which could be forwarded by the free canal to New York at  $8\frac{1}{2}$  cents per bushel, but which the railway agreed with the shipper to transport at 9 cents per bushel, contingent upon receiving the entire quantity at the rate of 25 car loads per day, and upon condition that it could charge 12 cents per bushel and refund the 3 cents upon the fulfillment of the contract. Unless such safeguard had been provided—if freight on the canal had dropped to 7 cents per bushel, the forwarder might suddenly plead discrimination and combination and give it to the canal, and it is but just to enable the railway to protect itself in the manner indicated. If, upon the fulfillment of the agreement the 3 cents per bushel was refunded as a rebate or drawback, in what sense has any harm come to any interest which seeks or desires the protection of this act? Is not this argument

unanswerable while the New York Central Railroad and the canal would be free, and this company alone amenable to such an act?

Yet, again, if through rates are made in either direction, between Western points and seaports which can be reached *via* the Canada Southern, Great Western, or Grand Trunk Railways, between the Niagara and Detroit rivers, those companies, being within Canadian territory and jurisdiction, can pay rebates and drawbacks out of their proportions of such through rates without hinderance, and one cent per 100 pounds, or \$2.50 per car load, will turn the business *via* their lines and away from the Lake Shore, Pittsburg, Fort Wayne and Chicago, Pan-Handle, and Baltimore and Ohio Railroads, to the loss and injury of American interests, because the latter would, by this act, be prohibited from meeting their action, as a mere reduction of through rates would not do it. Is this justice? The railways can now meet this state of affairs, but this act deliberately permits Canada to take their trade away in that manner, while you tie the hands that would retain and defend it.

SECTION "THIRD" provides : "That the companies or "persons in the first section recited shall not combine, con- "tract, or agree, by changes of schedule, carriage in different "cars, breaking car loads, or otherwise, to prevent the con- "tinuous carriage from places of shipment to destinations, "whether upon one or more railroads, nor shall they con- "tract, agree, or combine to pool their own freights or those "of different and competing railroads, or divide their aggre- "gate or net proceeds."

I have shown how the breakage of quantities upon a large bulk of traffic is necessitated at Buffalo by the transfer from lake to rail, or from lake to canal. The same necessity is insurmountable at all other points of lake and rail transhipment, and from rail to rivers, and oceans, or *vice versa*. No legal or mechanical ingenuity can overcome these necessities, nor, in the nature of such physical facts, can carriage be continuous. The law can not, therefore, be made to apply to this vast aggregate of business. While the obligations of the railways to the commercial public and railway economies offer stronger constraint than law, to prevent the needless

transfer of all-rail goods or breaking of car loads, it is nevertheless true that if the New York Central Company desired, for any purpose, to create a break of bulk, and yet avoid this act, it could so shape its policy as to send or receive greater or less quantities of property to or from the lakes, and avail of such break of bulk. The Pennsylvania Railroad could do the same at Pittsburgh or Erie, the Illinois Central, Chicago, Burlington & Quincy, and other railways at Chicago ; the Milwaukee & St. Paul Company at Milwaukee ; the Missouri Pacific at St. Louis, and at various other points, this bill creates inducements for such transfers which have never before existed.

For instance, if any company, possessing such outlets, found it cheaper to so adjust its through rates as to require a transfer to its water connections rather than to sacrifice large sums upon its way business, might it not legally do so, and does not this act bristle with inducements to do it ?

To the whole paragraph prohibiting contracts, agreements, combinations, or pools, I oppose the logic of the past ten years, with all their contests and receiverships, the almost unanimous sentiment of the thoughtful mercantile public, the belief of every railway officer whose opinion is worth the consideration of this Committee, that railway contracts, agreements, combinations and pools, being restricted in this country as to excessive charges by its water routes in the manner pointed out, are intended to and will secure the public against discriminations, and are, in a national, corporate, and individual sense, desirable, and that they offer a better panacea for mercantile ills than the provisions of this act or any other that can be framed.

If A. and B. are both located for the manufacture of flour at a station in Ohio, through which two or more eastward railways pass, discrimination against one or the other lies solely in the first fact that they are charged unequal rates. For instance, if A. pays 60 cents per bbl. upon his flour, and B. pays 50 cents, it is discrimination in a bad form, and must ultimately result in A.'s failure.

If, however, the railways and A. and B. take railway cost, the price of wheat, and the value of flour at its consuming

markets into careful consideration, they will not fix or agree to rates of transportation beyond a just reward for those articles or services, and if such considerations warrant an advance in the rate to 75 cents per bbl., and that rate is then charged squarely to both parties, although it may be higher than either of them paid before, it is not discrimination, and it is my experience that both those millers would applaud and co-operate in any plan of contract, agreement, combination, or pool which removed all fear from each that the other possessed advantages in rates, and which would guarantee to both uniform rates for a term of years, and thus enable them to know with certainty the transportation basis of their business.

To apply this illustration to Chicago, St. Louis, Cincinnati, Indianapolis, or Louisville, is to strengthen the force of the argument and enlarge its benefits, for the thoughtful merchants of controlling markets understand as well as railway managers that any plan of pool, or otherwise, which will secure to them equal rates, fewer fluctuations, and fewer rebates is best for both the railway and mercantile interest.

The author of this bill said, in discussing it, that it did not undertake to make rates for the railways, and that each railway might charge, for itself, such rates as it saw fit. This might produce different through rates upon different railways ; as, for example : if this act, applied to the annual report of any considerable eastward line, caused the sacrifice of one million dollars annually upon local business, and the loss of the profit upon its through business would be but one-fourth as much, its through rates might be advanced to protect its way rates. If other lines found different results and fixed different through rates, three or more different through rates might prevail upon like articles and dates, from each city to each of the Atlantic seaports, where the rates had before been uniform. Would it be better for the forwarders of that city to have various rates, or a combination, or pool, to secure uniform rates ? Would it be better to thus practically withdraw a portion of the carrying facilities any city now enjoys, by thus authorizing discriminating differences in rates ? Would not then railways, charging the lower rates be crowded with traffic in preference to others, and if so over-

crowded, how could they fulfill the mandates of the first section requiring equal facilities for all? Would not the very discriminations complained of thus result inevitably?

If this new element of uncertainty were introduced into railway service, particularly at seasons of grain, provision, tobacco, or cotton movement, would not greater harm come to commercial values and trading than in the past?

Furthermore : By the other provisions of this act, requiring that no breaks, stoppages, or interruptions shall prevent continuous carriage, and that the charges for carrying, receiving, delivering, storing, and handling shall be the same to all parties, does not its language and purpose require unavoidable arrangements and contracts between the different carriers?

If the Lake Shore Railway makes rates from Chicago *via* the Erie Railway to New York, to which the Erie Railway had not first assented, what right has the former company to bind the latter to those rates? and if the Erie Railway, upon the arrival of the property at Buffalo, found that it seriously interfered with its other through or local traffic, as regulated by this act, and the Chicago traffic was, therefore, thrown back upon the Lake Shore Road, would not harm result either to the public or the Lake Shore Company from such lack of agreement? Taking this instance as the type of many others throughout the country, are not contracts, combinations, agreements, and pools necessary to the public in the very nature of the business? I am aware the act says different and competing lines, but they can not always be separated.

Further : The act prohibits pools only upon inter-State competition, and they can therefore be agreed to between points in the same State ; as, for instance, between Columbus and Cincinnati, Albany and Buffalo, Chicago and East St. Louis, between the different railways in Missouri, and between those in Wisconsin and other States. Would not this act stimulate such pools?

Still further : Successful pools now exist under prior contracts, which pools and contracts could not be disturbed by this act. A prominent instance of this is the pool of the three lines between Chicago and Omaha, which has benefited large public and railway interests. If a new line is opened between Chicago and Omaha, but passes through two States, this bill

would appear to prohibit it from joining such pool, even though the other Railways assented, and the new line would therefore attempt to destroy it, and be justified by this act. Would it not, therefore, produce the uncertainty in rates and the injury to railway property which the report accompanying the bill, as reported in the House, said it sought to avoid, and what national, public, or corporate interests would be benefited by such restriction? Let us, however, accept the other view of the case. If, instead of fixing different rates, the railways decided to issue the same rates, the fifth section of this act then requires the issuance, publication, and posting of such schedules of rates and points.

At Chicago, there are five principal railways leading eastward, and about as many from most of the Western railway centres.

In order to publish such simultaneous rates, must they not combine at each point to fix those rates, if they issue, apply, and charge them simultaneously? Do not and will not mercantile interests require this concert of action, in order that through and local shippers, and the values of merchandise on and *via* all lines, be charged alike, and be uniformly free from discrimination? What interest can Congress, then, have whether railways pool or do not? The sole and essential object of pools has always been the maintenance of agreed tariffs, and the equitable divisions of tonnage at those rates. If this or any Congressional act enforces that desirable maintenance, why prohibit pools, which can no farther go; and, *ergo*, if the rates can be maintained by pools, what is the need for this act? The rates can not be made higher by pools than by this plan of combination approved by national sanction, and a low standard of through rates would appear to be the only justification for prohibiting pools, unless it be to enforce the *pro rata* features of this act, which I am sure will not prevail in any contingency against the facts that will be submitted in that connection.

THE FOURTH SECTION *provides*, that "it shall be unlawful for "persons recited in the first section, to charge or receive "greater compensation per car load of similar property for "a shorter than for a longer continuous carriage."

This is the most important and far-reaching section of the act, and deserves the most attention. In the discussion of

the 12th of December, Mr. Reagan said : " If railroad companies undertake to carry through freights from one centre of trade to another centre of trade at less than compensating rates, and then charge the way freights with a loss on carriage of the through freight, we mean to defeat this." And elsewhere in repeating this position said: " This is the issue sharply and clearly presented."

The railways are willing to accept the discussion of this question upon this basis, confident of their ability to convince fair reason that it is a question that can not be adjusted by law.

The author of this bill, in the same debate, used the following illustrations of the meaning and application of the act in this regard : " The rate being fixed, if it is \$100 per car load from Chicago to Boston, under this bill the Railway Company may charge \$100 per car load from Lowell to Boston." I ask, is this correct under the operations of the act ?

Suppose that a rate be fixed at \$100 per car from Chicago to Boston on grain, and at \$20 from Troy to Boston on grain, at the same time, and using the same route in Massachusetts in both cases as from Lowell to Boston. Can the railway charge \$100 from Lowell to Boston, or is it limited to \$20 ? The bill clearly specifies the latter, as both are inter-State commerce ; otherwise, why charge only as much from Lowell as from Chicago ; and if it can charge Chicago rates to Boston, why not charge the rates from San Francisco to Boston, on business from Lowell to Boston, instead of those from Chicago ?

In another place the same gentleman said :

" And, for instance, on a line of carriage of 1,000 miles we allow them to charge, if they see proper to do so, as much for carrying a car load over 100 miles as for 1,000 miles."

Is this justified by the act ? Clearly not ; for, if the illustration of 1,000 and 100 miles be good, why will it not be equally logical to charge as much for 25 miles as for 2,500 ? or if a through rate and bill of lading be issued from Chicago to Liverpool, as it is to and from a foreign country, why may not that rate be then charged from Chicago to Buffalo ?

The sentence used by Mr. Reagan illustrated the rate from Kansas City to New York. Do I understand the author or advocates of this measure that the Erie Railway can charge as much for inter-State traffic for 100 miles to New York as the

rate from Kansas City to New York on like articles and simultaneous service? Can this be just, and is it not authorizing discrimination to a far greater extent than any that exists?

If the above answers of Mr. Reagan to Mr. Phillips and Mr. Deane become the legalized interpretation of this act, many objections to the *pro rata* features of it will be null; but its language warrants no such interpretations. This fourth section distinctly states that "it shall be unlawful for *any person* to charge or receive more for a shorter than a longer distance in one continuous carriage."

Is it not clearly the meaning of the act that the Erie Railway, being one corporation, is one person between Buffalo and New York. Could it, therefore, charge or receive more between Buffalo and New York than its proportion of a rate from Chicago to New York, and if Chicago why not St. Paul, and if St. Paul why not Salt Lake City, and if none of these then what through rate is to govern the local rates?

The report submitted by the same gentleman, interpreted this section in part, as follows: "That the "freight rates and charges, etc., shall not be greater than the "like charges for the same, or like carriage of property, "carried wholly within a State or territory."

How could he, therefore, have given such answer as to the rates from Lowell to Boston?

Either his report or his explanation is wrong, because they differ essentially; in other words, could \$100 be charged from Lowell to Boston if it exceeds the like and simultaneous charges in the State of Massachusetts; and if the latter, then which one of the many charges within that State is to govern?

Taking these two clauses and these explanations of them together, do they not distinctly mean that if the Erie Railway fixes a rate upon grain from Buffalo to New York that such rate shall not be at that time exceeded upon grain between any station east of Buffalo and New York. Furthermore, does not the act prohibit that company from making such rates between Buffalo and New York, even in competition with the Erie Canal, less than its proportion of the through rate between Chicago and New York, although parties in Chicago may have contracted to pay certain charges? and does not this interfere with the inviolability of contracts? Then, under such phraseology, if the Erie pro-

portion of the through rate exceeded the local rate fixed by it, would not the forwarder of the Chicago grain have a claim under this act for such excess? Following this reasoning to its logical conclusion, does not the act provide that if the Erie Railway makes a low rate on grain from Elmira, N. Y., to Jersey City, against the canal, such rate can not be exceeded east of Elmira to Jersey City? Or, going further east, if the Erie makes a special but not a through rate from Middletown to New York for the Oswego Midland Railroad—with which it has no through arrangements—in order to divert grain from Lake Ontario and the St. Lawrence River at Oswego, would the Erie be bound by this act to make rates upon like articles from all stations east of Middletown, in New York State, thence to Jersey City, not to exceed such special rate, the points of shipment and delivery being within the definition of inter-State commerce?

When these logical illustrations cover 960 miles of the Erie Railway, passing through three States, involving a main line and 16 branches, with upwards of 280 stations; connecting or competing with 15 other railways at 35 points, receiving freight from four western terminal stations, at varying distances and proportions of through rates, and forwarding the same, not only from the foregoing number of stations upon its own lines, but to three times that number upon the lines of connecting railroads, through three points upon the Hudson River, four routes into Pennsylvania, and three routes into New England, will the author or the advocates of this bill give me a practical illustration of the rates which will regulate the through and way charges of the Erie Railway between each of its terminal stations, and between each of its connecting and local stations, and upon each class of traffic, and then apply that rule to all the inter-State railways of the Union? I tell you, sir, that a railway chaos would be inaugurated that would defy the attempts of legislators, the mercantile public, and railway managers to adjust it, except as it is now adjusted.

If, therefore, there will be such difficulties in understanding, and injustice in applying the act, the next question is :

Are there any carriers free from its application to an

extent to give them a large exempted traffic, while, at the same time, their action binds other railways to their rates?

A striking illustration is the Illinois Central Railroad, which was built by Government aid. It crosses competing eastbound railways at some twenty points within the State of Illinois. In order to reach the seaboard those competing lines must, almost without exception, use all rail routes that pass through two or more States; while the Illinois Central is, in itself, upon its lines between Chicago, Dunleith, and Cairo, entirely within the limits of its parent State.

Can it not, therefore, carry grain without limit to Chicago for delivery to lake vessels, which, in turn, are to deliver it to the New York Central Railroad for New York, or the Pennsylvania Railroad, at Erie, for Philadelphia; and every carrier in the through line be free from the act or any influence of the rates so obtained upon all their through and local business?

Is it not again true that every all rail line, taking like freights on the same dates, from the same points, to the same consignees and destinations, and at the same rates, storage and handling charges, would, by this act, if it becomes law, be affected by its provisions upon their local traffic?

To carry this freedom further. Upon traffic received by that railway from the Ohio and Mississippi Rivers at Cairo, and that which is delivered at Chicago to Lake Michigan, transfers at both points are unavoidable, and can not be regarded as breaking bulk with the intent to evade the third section of this Act.

Inasmuch as all river carriers, and all lake, steam, and sail connecting lines are exempt, I ask if the agents of the Illinois Central Company secure 1,000 bales of cotton in Memphis for transportation by river to Cairo, thence by its railway to Chicago, thence by lake steamers to Buffalo, and thence *via* the New York Central Railroad to New York, or to Erie, for the Pennsylvania Railroad, and thence to Philadelphia—are not each part of and all those routes freed from any obligations to this act? Is it not further true that while every carrier in the first instance could take the property without affecting its local charges; that if any all rail

line, Memphis to New York, carried a like quantity on the same dates and at equal rates, this act proposes to pull the entire cotton traffic of each of those carriers down to the level of that transaction?

The same illustrations may be used with equal force in the case of the Chicago & Alton Railway, between East St. Louis and Chicago and intermediate points in Illinois.

They would also be equally apt, if the Pennsylvania Railroad secured 100 packages of provisions at Cincinnati, or 100 hogsheads of tobacco at Louisville, to be forwarded *via* the Ohio River to Pittsburg, thence *via* the Pennsylvania Railroad to Philadelphia, and thence *via* ocean or the Delaware and Raritan Canal to New York. In that case would any of those carriers of those articles from or to those different points become responsible to this act. And, would not the Pennsylvania Railroad itself, *via* its all rail routes and every other all rail carrier, in competition with such water and rail routes, accept the alternatives of loss of through traffic, and would they not then advance their local rates to compensate?

I have instanced only current transactions of prominent lines, but our railway system is doubtless full of them, could its intelligent managers be sufficiently heard.

This exemption has been so often shown during the argument that repetition seems useless; but it has a more forcible application in this *pro rata* connection than any other.

*First.*—None of the Trunk Railways are, nor can they, be required to pro-rate or otherwise specifically divide the through rates of and made only by their railway or other connections from any of their Western termini to any points East thereof. Even this bill does not claim such powers, and only prohibits breaks of quantity. What is, therefore, to prevent the New York Central, Erie, Pennsylvania, and Baltimore and Ohio Companies from fixing the same rates on all their like traffic received from rail as well as lake connections? In that event, or otherwise, upon local business from their Western termini, would not the Pennsylvania Company be free to charge more or charge less from Pittsburg or Erie, in Pennsylvania, to any or all their local

stations in Pennsylvania than the rates from the same points to Philadelphia, also in Pennsylvania?

The same illustration is true of the exemption of the New York Central in the State of New York; but the act would discriminate forcibly by applying to the Erie and Baltimore and Ohio Companies, being inter-State on their like or competing traffic, and so restrict their local charges.

National legal discrimination of this kind would never be justified if deliberately attempted; and its like, unintentional effect, should be equally prevented.

*Second.*—There are nine great leading and competing eastward through carriers:

1. The Grand Trunk Railway.
2. The St. Lawrence River.
3. The Erie Canal.
4. The New York Central and Hudson River Railroad.
5. The Erie Railway.
6. The Pennsylvania Railroad.
7. The Baltimore and Ohio Railroad.
8. The Chesapeake and Ohio Railroad.
9. The Virginia and Tennessee Railway Line.

Are not five of these carriers clearly exempt, in ways variously indicated, from this entire act; do they not as clearly control the others, and can there be national justice in legally crippling four while five are legally or naturally free?

*Third.*—If, therefore, the act is seriously difficult of application, yet, if applied in its most forcible effect, fails to touch or reach a majority of the remaining through carriers who would be principally affected by this bill, are there other public, or traffic, reasons why such act should not prevail?

I cite an eastward illustration of international significance, as the act applies to traffic to and from any foreign country: If there were 100,000 bushels of grain at Toronto, in Canada, destined to Liverpool, three of the foregoing carriers would be enabled to take it without legal hindrance, to wit: the St. Lawrence River and the Erie Canal, in their seasons, and the New York Central the entire year. The Erie Railway competes with them for its carriage, but in order to take it to a vessel lying at its docks in Jersey City, it must take it from

a foreign country, and pass it through three States, and would, therefore, be amenable to the provisions of the act, and its local inter-State business be regulated thereby. If the grain goes *via* the Grand Trunk Railway, what good comes to any interest of the United States? If it goes *via* the St. Lawrence River, and from Montreal in Canadian and English bottoms, the same inquiry is forcible as relating to our railway and shipping interests. If it goes *via* the Erie Canal, American interests are better subserved, and if *via* the New York Central, yet more, because of the employment of a larger number of persons in its transportation.

To pursue the illustration: If a like quantity was at the same time in Toronto for distribution to various points upon and *via* the Erie Railway, and 50,000 bushels of it were destined to Philadelphia, but by leaving the Erie line at Waverly, its point of Philadelphia intersection, 170 miles from Buffalo, it established the entire rate for the transportation of like grain at that time between Buffalo and Waverly; that 25,000 more destined to Newark and Paterson established the rate of carriage to all points in New Jersey west of those points; and that the remaining 25,000 destined to Jersey City, locally, established the local rate to Jersey City, in contradistinction to the foreign rate, as above cited, then does not the act again pointedly discriminate against one of the principal railways of the country, or in favor of another.

The Erie Railway, then, has presented to it by the language and penalties of the act, two alternatives: The first is to refuse the carriage of the property at the price made by the others, and to that extent remove one competitor and contribute to the decline of traffic through the State and at the port of New York; or, second, to incur the responsibility of reducing its entire way rates to all inter-State points to the level of that transaction. Does wise national policy dictate these alternatives, and what local interests call for or are benefited by it, and would not local rates be advanced if practicable?

*Fourth.*—I cite one more, but westward, international illustration:

The Hudson's Bay Company, of London, annually sup-

plies its western stations, via St. Paul, with English goods, and transportation contracts are solicited from all carriers, for quantities which usually aggregate several train loads, which tenders are opened in Montreal, where the Grand Trunk Railway is a competitor. Does not this bill present the alternative that, if American all-rail carriers from New York, Boston, or Philadelphia secure these shipments against such competitor, or even the rivalry of the Erie canal and the lakes via Duluth, which this law does not regulate, they must bring down their entire "like and contemporaneous service" to the results produced by that rivalry? The railways have empty cars at the seaboard, which have brought western products to tide, and which cars would otherwise return empty, and can therefore be loaded and transported at a very minimum of cost? Can any possible good to any possible American interest be subserved by striking down local rates westward from New York to the level of those foreign routes, or to push upon the American carriers the alternative of their loss? And if west-bound freights are diminished, must not eastward, through and local rates clearly be advanced to compensate for such loss of revenue?

*Fifth.*—If there are international reasons against it, there are yet more potent arguments entirely within our own borders. The carriers between Chicago and Buffalo by lake are free to make rates as they see fit. A vessel carrying 40,000 bushels of grain may take one-fourth of it to Detroit, one-fifth to Cleveland, and the remainder to Buffalo. But if the Michigan Central or Lake Shore Railways desire to take equal quantities to each of those cities, in competition with those vessels and rates, they must, because they pass through various States, reduce their entire local transactions to the level of the free competition so forced upon them by this act or abandon that competition, lose that freight, and enable the lake carriers to advance rates of transportation upon the public. Can any greater discrimination be legalized than this practical operation of this bill?

*Sixth.*—Like illustrations exist all over the country. The railway parallel to the Chesapeake and Ohio Canal, passing through portions of West Virginia and Maryland, is subject

to like conditions of fact, particularly upon coal. Those which are parallel to the Ohio, Illinois, the Mississippi, and all the western rivers and the ocean, are subject to equally forcible illustration. As, for instance, between Cincinnati and Louisville, Louisville and St. Louis, St. Louis and Memphis, Rock Island and St. Louis, Memphis and New Orleans, New Orleans and Galveston, New York to Richmond, Norfolk, Charleston, Savannah, New Orleans and Galveston.

To pursue this theory and fact: If the Baltimore and Ohio Company should make rates from points in Maryland to Philadelphia or New York by canal or ocean, it is exempted, and its local traffic suffers no harm, but if it sees fit to prefer or give forwarders or consignees the option of rail instead of water transportation to Philadelphia, it becomes as amenable to the act in the latter as it is free from it in the former instance.

This argument, also, has forcible illustration from New York to New England points—Boston, Providence, etc., by combined rail lines passing through portions of different States, as against the untrammeled and free companies operating via Long Island Sound and the Atlantic Ocean.

*Seventh.*—Assume that a merchant of New Orleans desired to ship a carload of dry goods all-rail from New York, does not that transaction influence all the dry goods rates from New York by the same route to every other inter-State point, upon that day, under the ruling of “like and contemporaneous service;” and can any one of the inter-State railways charge any more upon its other dry goods traffic than the amount derived by it from its charges upon that transaction? The goods would be taken to New Orleans in returning cars, at very low rates, in opposition to ocean, and, if such opposition did not exist at Nashville, Tennessee, and Nashville merchants, in nowise in competition with those at New Orleans, were content to pay a higher rate than that to New Orleans, what national need requires such an act as this? Farther, if the merchants at all points upon the railway route to New Orleans receive their goods by railway at one-fourth the rates they paid other carriers before the railways were built, what farther legal or equitable claim have they

or the National Legislature upon the railways, who do not carry to New Orleans cheaper than that city received its goods by ocean before the railways were completed.

*Eighth.*—The Union and Kansas Pacific Railways have no local traffic for hundreds of miles over their lines upon the plains, yet the fact that they pass through different States requires that they reduce all that small and relatively valueless traffic to the level of their proportions of through rates.

For example, it will be conceded that the Union and Kansas Pacific and Atchison, Topeka and Santa Fe Railroads, running between the East and Denver, have developed that city and the State of Colorado to an extent due almost entirely to their construction. As the outgrowth of their enterprise, numerous smaller railways have been built in Colorado for carrying the products of its mines. The latter would not now exist but for the earlier construction of the former, yet they are at liberty, being under the laws of one State, to charge large rates and enforce arbitrary rules at will, subject only to the laws of that State and the exigencies of trade, while the greater railways, that gave them value, developed the State's industries, and scattered its metals all over the world, are restricted by the proposed terms of this act. In other words, the pioneers of good may be injured, while the camp followers are exempted and protected.

*Ninth.*—Assume 50,000 bushels of wheat to be at Burlington, Iowa, and an equal quantity at Bath on the Erie Railway in New York, and all for transportation to Jersey City, and that the transportation from Burlington to Jersey City be 40 cents per 100 pounds, or 24 cents per bushel by continuous carriage. This act provides that if the proportion of said 40 cents accruing to the Erie Railway for 422 miles from Buffalo be 15 cents per 100 pounds, that rate can not be exceeded upon any other grain originating east of Buffalo, and destined to Jersey City, while in practice we would charge the resident at Bath perhaps 20 cents per 100 pounds, or 12 cents per bushel. If the shipper at Bath paid but 12 cents per bushel while the shipper at Burlington paid 24 cents per bushel, or a much less rate per mile, can not the shipper at Bath in the Genesee Valley yet enter into prompt and successful compe-

tition to the extent of his production, and what justice or popular demand requires the national enforcement of the two alternatives, viz.: That the shipper at Burlington shall pay the higher rate per mile charged from Bath; or, secondly, that the rate from Bath to New York shall be reduced to the same rate per mile as from Burlington? Clearly, the interests of the Burlington shipper in the one case are injured, while those of the shipper at Bath are not benefited, and, in either case, those of the railway are very seriously affected, either in rates or by the loss of traffic, to the good of no one.

*Tenth.*—There are upon the line of the Erie Railway flouring mills that receive wheat from the West, and send their flour to the seaboard. By this act the rates upon wheat to such mills can not be exceeded to any point short of the same, and the flour rate east of the mills to Jersey City can not be exceeded to any intermediate point. Does any good come to any interest by passing an act which either forces us to close the doors of that mill upon a regular and important business, or in the alternative throw down the entire local traffic for exceptional periods, irregular movements, and small quantities to the level of the rates afforded by the wholesale principle applied to the miller?

*Eleventh.*—The Erie Railway is a large carrier of petroleum, the quantity received for export averaging at times 200 car-loads per day, while during the same period the quantity for local consumption scattered over many stations in car-loads will not exceed 10 cars per day. Where the oil is burned, in France, Germany, or Italy, it may cost the consumer three times the price charged at Passaic, New Jersey. If, therefore, the consumer at Passaic receives his oil for so much less charges in the aggregate, although he may pay more per ton for transportation, what public necessity requires the application of a law forcing the railroad company either to reduce the domestic rate or increase the foreign one? Especially in view of the large quantity received for export there are ample facilities of storage and provision against the large fire risks involved, while at the local station its irregular receipt requires that it be held in cars or other exceptional and expensive provision be made for its care.

*Twelfth*.—At Newburgh, N. Y., the Erie Railway competes with the Hudson River, and on its way to New York passes through New Jersey, would it, therefore, become amenable to this act, whereas it now has the option of competing for the carriage of property by rail at the rates charged upon the river without local effect. If so it would compel the Erie Railway to carry from all points in New York State not further than Newburgh, at the price so fixed from Newburgh, for we clearly could not charge as much as from Kansas City to New York, as proposed by Mr. Reagan; second, to withdraw from Newburgh competition; or, third, compel us to charge the citizens of Newburgh during the close of river navigation a higher local rate than otherwise. Is such action as this demanded by any interest at New York or Newburgh, or upon the river or our line? and has Congress the right, or has it the desire if it has the right, to so materially attack the thousands of interests in this country of which this is but a type? This inquiry is more forcible as these water courses not only fix the rates between through points, but there is not a railway within my knowledge that is not to a greater or less extent influenced by the through rates so limited in fixing its local or intermediate tariffs. For instance, while steamers and sail vessels run regularly between Buffalo and Chicago, Cleveland, Toledo and Detroit, and do not run as regularly, if at all, to Sandusky or Michigan City, the rates to the two latter are, nevertheless, regulated by those to the former.

*Thirteenth*.—The above illustrations refer particularly to Eastern freights, but they are equally forcible westward. This company has a traffic averaging 150 car-loads of coal per day, to Buffalo, which is destined to and via all the lake ports. If it is destined in part to Milwaukee and it costs the consumer there \$5.00 per ton, what injustice is done the consumer at Addison, on our line, who pays \$3.00 per ton, even though that rate be in excess of the proportion received by this company upon the Milwaukee consignment.

It is particularly true of coal, that with due consideration to the demands of economy in returning otherwise empty boxcars, railways almost invariably make one rate in such returning cars and another in coal cars. The former is for the

convenience of the railway, the latter for the convenience of the forwarder and consignee, by reason of the economy of loading and unloading. If coal should be carried entirely in coal cars the carrier must carry the box car westward empty, and the coal car eastward also empty. It is to save this double empty movement and compensate the consignee that reduced rates are made in box cars; yet, as this act requires equal facilities and rates, it is questionable if the cheaper rate would not have to be made in the more expensive car. There might not be enough box cars to give to everyone, if equal facilities were demanded, or if there were this act might make the coal cars idle.

*Fourteenth.*—The Erie Railway Company has sixteen branches, many of them built at different periods under different charters, laws or forms of organization, running various distances into different States, to supply specific local needs. If I comprehend the intent of the act, would it not require that no greater rates be charged from those branches to Jersey City than for like distances from other points upon the main line, and the specific contracts under which these branches were mainly built, and the rates which their projectors and the public agreed to and are willing to pay, would be reduced, to the great detriment of all interests involved, and to the good of none, unless their prior contracts prevented.

*Fifteenth.*—I briefly call attention to the fact that where local points now have stable and fixed rates, they would be changing constantly with through rates, under this act; or if, in some instances, the through business was abandoned, as on short lines, their local rates would have to be advanced.

*Sixteenth.*—If, then, as I believe I have shown, considerations of an international, public and business character, as well as the difficulties of its application, oppose this *pro-rata* principle, does the increased cost of performing the local, as compared with the through service, offer additional justification for its rejection?

I can, perhaps, best sustain this illustration by supposing that the Erie Railway Company had no agencies except those at its termini, and did only a through business.

There would be no other station agencies, and only only where locomotives and men were to be changed, would stoppages be required upon a double track road. Trains loaded to their fullest capacity at the West, could then run without break in their cars or trains, except those required by the variations of grade; and no sidings would be required, except at relay and terminal points. Expensive switches, risks, delays and station stoppages, with their increased wear and tear, would be avoided. A more even wear upon the tracks over its entire length, the non-complication of through trains with the receipt and delivery of local business, a quicker through time, with less running speed would follow, and the millenium of cheap railway through transportation would be reached, if quantity could then be had with sufficient regularity to keep the trains in constant motion, and particularly if all the cars destined one way could be returned loaded the other with fair average weights.

Independent of these comparatively few necessities for through traffic, it is, therefore, clear that, upon the line of the Erie Railway there are 280 or more stations devoted to the local traffic of the line, in addition to a much larger cost per ton at the terminal stations for handling the local business because of its irregularity, the smaller volume to and from each point, the necessity for assorting it much more carefully, and the greater risk attending all these increased services. There, therefore, clearly attach to those 280 local stations a corresponding or greater number of side-tracks. To connect these side-tracks with the main lines and the subsidiary side-tracks there is required a very large number of connecting frogs, rails, and switches, and in proportion as these connections and switches are added to or multiplied, the risks of running off the track and of collision are correspondingly increased. It is also clear that the aggregate lands purchased upon which to lay this large aggregate of tracks and sidings, if combined at any one terminal point, would far exceed the combined seaboard terminal facilities of all the trunk lines at all the seaports. There are then erected upon these grounds, with varying degrees of expense, 280 station buildings, more or less, unnecessary for through traffic. In

each of these stations there must be separate agents, individual forces of clerks, and at a majority of them paid laborers; and largely increased taxation must be paid.

Then comes the question of current running. Given a train of forty through cars from Buffalo, which, at the present average freight speed, can reach New York in forty hours. To start an engine from Buffalo upon local freight trains, possibly with five cars, and running into Jersey City with possibly thirty cars, the same train may, upon that entire distance, pick up and drop an aggregate of three hundred cars; to do which will require one hundred and thirty hours, and the cars, from this fact alone, will not average nearly as much in earnings per day each as the through cars.

The cost of station service, where but fifty tons are handled in a month, may then be an aggregate of \$1.50 per ton, while at a station where 50,000 tons per month are handled, the cost may be reduced to 25 cents per ton.

In addition to these varying costs of the receipt, loading, unloading, and delivery, cars can be loaded with through freights to their utmost capacity, while to and from local stations they hardly average one-half their capacity, although for purposes of transportation they may be car loads. Increased numbers of men are then further required upon the local trains for the increased number of stoppages; the increased length of time they are out; the additional switching at stations; the additional handling of goods to and from the cars; so that, as before cited, a through train of forty cars may carry five hundred tons of freight in one instance, while a local train, which has, in its passage, handled two hundred cars, may not handle to exceed five hundred tons, and at much manifest increase of cost for station service, wear and tear of roadway, increased train service, both in employees, machinery, and fuel, greater delays and risks, as well as earning power per car, and in every respect deficient results as compared with the through traffic.

The increase of local cost has, from these and minor causes, been variously estimated by experts at from 33 to 60 per cent. over through business of the regularity and volume which is presupposed. This question was exhaustively considered by a committee of the New York Legislature

in January, 1860, but as the report accompanying this bill concedes some difference of cost, I have not gone more fully into that question.

In the practical operations of a railway one class of traffic must necessarily be intermingled with the other; although there is a growing desire of management to separate the two as far as practicable, as such separation decreases the cost of both. But in whatever measure the mixture of traffic may occur, the variation of expenditure will exist, and no law of inflexible rating can provide for the multifarious contingencies, competitions, complications, mileages, and traffic introduced into the daily transportation of the country. It has therefore become a railway axiom that local or way rates would have to be advanced in the absence of through rates, and through rates would require increase but for local traffic. I can not close this feature of the case more clearly than by quoting the words of the Chairman of a Special Committee of the Senate of Alabama, appointed to consider this subject in 1873:

"Ordinarily, it requires 24 hours to load a car, and 24 hours to unload it. The average speed of a freight train is ten miles an hour. A car carries ten tons of freight. Suppose the rate charged to be two cents a mile; if the car is to be moved ten miles, it would require 49 hours, and it would earn for the company \$2.00; that is, 96 cents per day. If this same car were to be moved 1,000 miles, it would require 148 hours, and, at the rate of freight, would earn \$32.50 per day."

*Finally.* I object to this fourth or *pro rata* section, that it undertakes to give the *pro rata* principle a national scope in the face of the arguments which have so justly and finally prevailed against it in the Legislatures of the States that have considered it; that it becomes vastly more unjust when applied to a whole country than to a State, because it restricts the activities and scope of wider competition, increases the difficulties of its observance, and the inequality of its application, the practical impossibility of its fulfillment, and introduces a greater and new measure of uncertainty into the commercial values of the country.

I object to it that, in a large number of instances it would require the railways either to give over their present transportation to the water courses, at rates which those water channels could then advance, because of the absence of such rail competition, or it would require the railways to reduce their rates between local points to the level of the fluctuating rates between the greater centres, with no good either to the vessels upon the lakes, to the great centres, to the carriers, or to the parties at the smaller points. If, in some instances, through business was abandoned to water, through and way rates would both be advanced.

SEC. FIFTH provides: "That adopted rate schedules shall be kept posted, stating the classes of property, the points between which and the rates which apply for carriage, handling, and storage, and when they go into effect, but no changes in such schedules can be made except upon five days' notice."

No objections are urged against the mere adoption and posting of schedules, which is now practically done, showing the different kinds and classes of property to be carried, the railway stations between which goods are to be carried, and the rates between such stations for ordinary transportation, receiving, and unloading; but the usages of receiving differ in various cities, as, for instance: The great majority of the entire shipments from Chicago is received and forwarded from warehouses, packing establishments, sidings, and elevators which belong to private parties, packing or elevator associations, or railways other than that railway which, in each instance, forwards the property. At various other cities, and upon the demands of merchants that rates be made uniform, disparities of location and varying distances from railway depots are equalized by the payments of the differences of cartage. This is now an exception, but the law would make it the rule, and rates would have to be issued to and from such warehouses to secure this uniformity. This is the case at Cincinnati. In the same manner, but to a greater extent, the handling and storing at destinations are for unequal periods, for diverse quantities and at various public as well as private warehouses, subject to laws of demurrage for the non-removal of property by consignees; to

delays for inspection at railway docks or stations, as in cases of tobacco or provisions ; for holding for foreign steamers ; and because of the failure of connecting lines to promptly remove goods at the terminal point of the rate and route. These and various other causes combine to make the posting of uniform schedules for storing and handling under these circumstances impracticable, and one that is not required by the mercantile public. The railways and the public have a mutual interest in regulating these charges according to circumstances. For example : The bills of lading for a large part of the through traffic delivered at New York City contract as follows : "Deliver alongside ship;" "deliver as consignees" "direct;" "steamer to be named after arrival," etc ; and for financial security much freight is consigned "to order" and to the care of banks. Upon its arrival, consignees are advised, and not until then direct its points of delivery, and the cost of such delivery then varies with localities. If ordered delivered at Staten Island, the charge would be greater than at Brooklyn, and the charges can not, therefore, be specified at starting points. It would be easier to enact that all lawyers practising in United States Courts keep posted in their offices uniform schedules of their charges for all kinds of service, changeable only on five days' notice of the Bar Associations. The difficulties of fixing rates of storage are yet greater. The rates and bills of lading are issued, say at St. Louis, by the Ohio and Mississippi Railway. How can that company post the charges for storage and elevation in the grain elevators of the New York Central Company at New York, unless the latter so authorizes ? and if it declines to so authorize, what power can compel it ? and if one company so declines, how can its rivals issue their schedules ? or, if one company has an elevator with fixed storage rates, and another has not, as is now the case at New York, would not the Ohio and Mississippi Company have to issue still different rates via its different connections ?

The point requiring five days' notice would work yet greater injustice. During certain seasons of the year railway rates advance ; at others they decline. At the periods of advance, if five days' notice were given, the forwarders would make excessive demands upon the companies for their entire

equipment, to go forward during those five days, and failing to supply cars, difficulties might arise and litigation follow. The result would, therefore, be, that during the five days preceding any higher schedule of rates, the railways would be crowded with traffic, and for periods of one week to perhaps one month following, they would have idle cars, men and power over their entire lines.

So, also, when five days' notice of reductions in rates had been posted, business would suddenly drop off largely ; there would be five comparatively idle days, followed by periods of unusual activity ; and it is such fluctuations as these which increase the expenses of all railways, by removing the element of regularity and substituting that of irregularity.

Again ; five days really means about eight, or at least seven days, under this act, as it takes one or more days to decide upon the rates, at least one day to print and revise them, and the third to issue and post them as required by this bill.

In my remarks upon the earlier sections of this bill, I have alluded to what becomes yet more important in this connection, the ability of all sail, canal, barge, ocean, river, and lake carriers, to make speedy and sudden changes of their rates.

For example, the latter may adopt rates from Chicago to Buffalo, and this bill prevents their being met by the railways for five days ; but before the five days have expired, the latter may have changed their rates twice ; and by being five days behind them all the time, the railways might be all the time out of the market unless their first rate was needlessly low. The same illustration is apt from Duluth, Detroit, Toledo, Cleveland, and between all points upon the rivers, coast, canals, and lakes, where inter-State railways compete with them.

It may therefore occur that steam or sail vessel rates may advance to exceed those by rail, and be kept there for four or five days. It is only necessary to stand before a railway map to understand the number of instances and volume of traffic that would make this more disastrous to the railways, and the public more dependent than heretofore upon the water carriers.

It is yet more unjust to some railways than others. The Erie Canal carriers can and do frequently change rates from Buffalo daily, particularly at about its opening and close. And the New York Central Railway from Buffalo to New York, or the Pennsylvania Railroad from Erie to Philadelphia, can meet those changes at five minutes, instead of five days' notice, and can similarly issue lake and rail through rates, from Chicago *via* their lines, while the Erie Railway—lying between, and having routes to both New York and Philadelphia—would be required by its inter-State position to give five days' notice. This would surely result in the entire loss of its lake trade, as changes of one-eighth of one cent. per bushel at an hour's notice are ample, and the public would so lose one of its largest Trunk Line Railway competitors on that traffic.

It may also be the case that foreign disturbances are telegraphed; that great disasters occur; that, as during the past winter, great snow-storms block railways in a night, and require action as to rates on the next day, as well as the necessity for the stoppage of receiving or delivery of freights; that special care be given to perishable property; that some connections be notified of such stoppage, while others be not so notified; the whole constituting an aggregate necessity for prompt action, which is probably more essential in the management of railways than any other interest, unless it may be the telegraph.

SECTION NINTH.—I now desire to call marked attention to another and the most prominent discrimination legalized by this bill. The first section inferentially applies its provisions to traffic to and from a foreign country, but only by railroad, and even that interpretation is doubtful in the minds of the legal gentlemen who have examined it; but whatever doubt may exist upon that section is solved by this ninth section which, in clear and unmistakable terms exempts all traffic through or local to and from all foreign countries.

If you were legislating in the interests of Liverpool, London, Bremen and Havre, and against New York, Boston, Philadelphia and Baltimore, could you devise a measure better suited to that purpose? By the other sections of the act, its provisions and penalties apply to traffic between all points in the

West, and all of those upon the seaboard, but by this ninth section, all tonnage from or to the same western cities, and passing through the same seaboard cities to or from foreign countries is clearly free.

What will be the general railway result? Clearly that the companies possessing the requisite facilities will enlarge and stimulate their foreign traffic by more through rates and more bills of lading between this and foreign countries, in both directions, and by a wilder internal railway competition than before; because the smaller the tonnage the more active the rivalry to secure it, and the lower the rates to get what does go. Greater inducements than ever before will be offered large forwarders of merchandise from and to foreign ports direct, railway rebates and drawbacks may and will be offered and paid without limit, or railways may pool or divide their earnings on that traffic, or the rates upon that traffic may be changed every hour; and all these things are authorized by this act on that traffic.

What will then follow as to rates?

Assume a rate of freight to have been fixed, from Chicago to New York consignees, under this act, at 35 cents per 100 pounds, and that it is then held there by this law.

The competition for foreign freights which I have alluded to may reduce the proportion, accruing between Chicago and New York, of a through rate from Chicago to Liverpool to 25 cents, making a difference of 10 cents per 100 pounds, or \$25 per car-load less between the same points on the same dates, for the same articles, *via* the same railways, and in the same trains, and that difference and discrimination are legalized by this bill.

If this is the railway, what is the trade result?

If it permanently benefits any American interest, I cannot discern it, but it clearly injures and discriminates against every trade, financial, mercantile, and commercial interest at every sea-board city of the Union.

The merchants at those cities who have heretofore received large consignments by railway from the west, which have then been sold in New York to the agents of English houses there resident, cannot hereafter compete in those respects, for the following reasons:

A. There will be an average difference in both railway and steamship rates against them, and therefore in the total or through price for carriage, as the English steamship lines charge lower rates at times upon large western consignments taken at their convenience to fill up their ships on their last days in port, when other cargo may not otherwise be had, than upon tonnage on the spot which must go *via* some of their lines from local forwarders who cannot choose, as at the west, between the steamships sailing from all ports.

B. The lower foreign through rates may then be changed at a moment's notice between any western city and any foreign port on the cable advices which daily determine large transactions, while the domestic railway rates can not be changed except upon five days of printed notice which is practically seven or eight days, as before shown.

C. This will injure the merchant and banker, and other tributary interests at the seaboard, and the foreign house will surely do its business with the cities which, being but equal in other respects, can give the cheapest and promptest total cost, for those are mercantile and commercial essences.

The seaboard merchants are willing to stand up in a fair trade contest against any natural advantages our own or other cities possess, but in their name, but particularly in the name of New York merchants, I protest against this nationalized legal discrimination against them and its injury to their interests. If desired I will undertake to procure the endorsement of every exchange and commercial organization on the Atlantic seaboard against this injustice, and I do not believe that this portion of the measure is called for, or has received, or can receive the sanction of the New York Board of Trade and Transportation, or its intelligent Chamber of Commerce, as inferred from the language of the report and debates upon this act. It will certainly not receive the approval of the New York Produce Exchange. I dismiss this ninth section by the utterance of the belief that nowhere else upon the Statute books of the Union is such an unwise, injudicious and discriminating measure found.

## GENERALLY.

At different stages of the argument I have, inferentially, approved modified legislation upon certain branches of this subject. I now desire to give form to those suggestions—

*First.*—That the element of quantity and regularity be recognized in railway transportation, as in every other mercantile transaction.

*Second.*—That the railways *may* adopt different rates upon different quantities, but, when so adopted, such schedules of quantity and variations of rate shall be published and posted.

*Third.*—That the railway companies shall be *required* to apply these schedules only to business between the seaboard and common Western points, but *may* do so upon other traffic.

*Fourth.*—That it shall be unlawful to vary from such rates or quantities, except upon such notice as the railway companies may so publish.

*Fifth.*—That, if any other variations are made, by rebate, drawback, or otherwise, the penalties shall apply alike to the railway companies that pay them and to the party who receives them.

This is surely defensible and just, upon the theory that receivers of stolen goods or accessories to crime can be made responsible.

*Sixth.*—The organization of a board or boards of railway arbitration, whose existence shall be legally recognized by national enactment, and whose decisions may be enforced in and by United States Courts.

I believe I utter the sincere wish of every railway manager of the country when I say that they desire stability and uniformity of rates, which shall yield only fair margins of profit, and that any law which will accomplish this great end, and so put a stop to discriminations by concealed concessions in rates, in the form of drawbacks or rebates, and which to that extent are unjust, will receive their cordial and united support. At the same time, I have spoken to but little pur-

pose if I have not left in your minds good reasons for more closely scrutinizing *this* act. For myself, I question its wisdom and object to its application. I believe that practice under it, with the desire to fulfill it, will develop discriminations of greater variety and extent, applicable to a larger traffic, and involving more values than any which have been known during our previous railway history. I believe the application of one law to all the railways of the United States to be impracticable, void of good, full of harm, unjust, unequal, and injurious, or exceptionally beneficial, as I have but briefly shown.

Farther, I object to this exceptional legislation, in that, while protesting against discrimination, this act in itself discriminates unusually and unjustly against the largest single interest of the country, and the interest which has done more to make the nation what it is, than any other that can be named.

It will be conceded that flour enters more largely into the economy of human life than any other staple ; yet, less than 10 per cent. of its average cost at the doors of dwellings throughout the Union, is made up of the amount it has paid for railway transportation. I believe it to be as impracticable to legislate for that 10 per cent. as it is for the other 90 per cent. I believe it unjust to legislate upon any fraction of its value, but clearly more unjust to legislate for one-tenth than for the nine-tenths. Surely, if the people need protection upon anything, they need it upon an article of such universal use. And, is it not true that, while the transportation of flour between Chicago and New York is but one-third at this time what it was at different periods during the war, that the remaining portion of cost has not been reduced in the like proportion? I believe the natural laws which govern the transportation of flour in the manner I have cited are as absolute as the laws of snow and rain, light and darkness, which stimulated the wheat to growth and perfection ; and that an attempt to so legislate will involve the people and their carriers in interminable litigations and vast expense, a maximum of annoyance and a minimum of good.

My colleagues will argue the legal features of this bill,

but I venture to suggest that if the values which transportation adds to market prices of all commodities at points of delivery are subject to legislative action, because it is inter-State commerce, and such transportation charges are but one-tenth or any other fraction of such value, and Congress has the power to legislate upon that one-tenth, why has it not the right to legislate upon the entire value of all the goods passing from all points within one State to all destinations in other States, under the same definitions or interpretations of commerce between the States?

I note with pleasure one thing: It is but a few years since lower through rates were demanded. That question seems to have been settled without law or enforcement, and neither the report nor debates upon this act claim excess of rates upon through traffic, but aim solely to bring down local rates. Can not this be as safely left to the natural causes which rectified former complaints? In this view, I have looked carefully through the last debates upon this bill, and the report which accompanied it, to ascertain what public sentiment demands it, and what interests are so injured that they call for its passage. I can only find a statement that evidence of discrimination has been submitted by the Board of Trade and Transportation of New York, from the Chamber of Commerce of New York City, and from a number of leading commercial cities of the United States; and that a resolution was passed March, 1878, by the New York Assembly, asking for "equity in rates of freight," without specifying or suggesting that equity or a remedy. I find but one farther allusion, and that relates to the Standard Oil Company. The latter case is now before the courts of Pennsylvania for adjudication, where it will be decided where all such questions can be taken and should be left, and as its transportation *via* the Pennsylvania Railroad is all in Pennsylvania, this act would not touch that railway.

I object in any case to the passage of an act upon the *ex parte* representations of Boards of Trade, or other bodies of any city or cities, until their carriers have a fair opportunity to be heard.

I then ask what proportion of the vast transporting public of the United States has expressed dissatisfaction, in pro-

portion to the enormous number of them, and the value of products transported and the leading industries of the country to which it relates?

Is not transportation, upon the whole, more satisfactorily performed, and at a lower margin of profit, than any other traffic of the country? Is not the clamor against banks; against the manufacturers of flour, for putting up its price; against the stock exchanges for their enormous fluctuations within periods of a week, without any corresponding changes in values; against Produce Exchanges for their fluctuations in all kinds of grain and produce, by corners; against petroleum exchanges for fluctuations in the prices of oil as great as one dollar per barrel per month; against trades unions; against combinations of manufacturers in the leading articles of trade, better founded and more universal than that against railways, and do not those questions first require legislation?

One of the advocates of the bill cited the sudden and great changes in freight rates. Do those changes compare, in annual average of tariffs with the number, suddenness, or range of changes which the great speculative grain centres force upon the farming and consuming communities? And if, because of changes in rate, railways are to be legislated against, how can you decline to regulate, by law, the changing prices of the necessities and staples of life, and if the facilities of transportation—then why not all the equally essential inter-State facilities and detail for financial conversion, purchase, and sale?

I object to all such legislative endeavors, and, as applied to railways, I believe this act would involve, practically and legally, questions of confiscation. I believe that in other instances it would come in conflict with the Constitutions of States, the proportions of inter-State rates accruing in each State, and the charters or general laws under which their railways were constructed. I believe it would enforce upon carriers unjust and burdensome duties for inadequate compensation. I believe that this question is best left to those active brains that make its solution the aim of their reputations and fortunes, rather than confide it to legislators, whose railway inexperience may work a public hurt instead of benefit.

## IN CONCLUSION.

At the close of the year 1877, there were in operation in the United States upwards of 74,000 miles of railway, in addition to work then progressing or contemplated upon about two thousand miles more, involving a capital and funded debt of \$4,569,000,000, with gross earnings of \$472,000,000, and net earnings of but \$170,000,000, of which but \$58,000,000 were paid as dividends to the holders of shares.

The entire disbursements, irrespective of interest upon bonds and dividends, were thus \$300,000,000, and this vast sum of money was disbursed to artisans and enlightened labor, and through them reached more interests and individuals than those of any other calling in the Union.

I cite the magnitude of these figures and interests to invoke in their behalf the most careful and judicious consideration, not only to the proposed bill, but to every measure which directly or indirectly, with good or inconsiderate intent, undertakes, in a national sense, the supervision or regulation of the methods by which the railways of the country shall apply the capital of which they are the enlightened and responsible custodians, to the living trade problem of the day, the transportation of the nation's products and people. I believe that to legislate exceptionally for this vast interest, and to leave rates upon water routes entirely free, and permit that they govern the rates of competing railways, without a like application of a like law, is the highest, because it would be a national injustice and discrimination, and I believe that its practical effect will be abortive.

I think it was in 1867 that a royal commission, appointed in England to investigate this subject in all its bearings, reported as follows: "Inequality of charge in respect of distance, besides being a necessary consequence of competition, is an essential element in the carrying trade; that is to say, the principle which governs the railway company in fixing the rate is that of creating a traffic by charging such a sum for conveyance as will induce the produce of one district to compete with that of another in a common market. The power of granting special rates thus permits a development of trade which would not otherwise exist; and it is

" abundantly evident that a large portion of the trade of the country at the present time has been created by and is continued on the faith of special rates."

And they add : " The conditions under which such rates are granted are so numerous that no special law could be framed to regulate them."

In 1872 a sub-committee of both houses of the English Parliament was appointed to consider matters almost identical with those sought to be governed by this bill, and after a session of five months, and hearing the most expert testimony in England, and after passing in review the complaints and remedies similar to those which American Legislatures annually receive and propose, they concluded that equal rates are " inexpedient," and gave the following reasons why such proposal was " impracticable :"

" It would prevent railway companies from lowering their fares and rates so as to compete with traffic by sea, by canal, or by a shorter or otherwise cheaper railway, and would thus deprive the public of the benefit of competition, and the company of a legitimate source of profit. It would prevent railway companies from making perfectly fair arrangements for carrying at a lower rate than usual goods brought in large and constant quantities, or for carrying for long distances at a lower rate than for short distances. It would compel a company to carry for the same rate over a line which has been very expensive in construction, or whose high gradients, or otherwise, is very expensive in working, at the same rate at which it has carried over other lines."

This is surely national, impartial and, I trust, convincing testimony.

Mr. Charles F. Adams, Jr., thus states his convictions after a thorough investigation, as to governmental regulation of railroad tariffs. Referring especially to the English laws, he says: " Nowhere has the system of special legislation been so persistently followed, and nothing, it may be added, could have been more complete than its failure." Again he says: " The result of thirty years of successive and wholly abortive efforts in this direction in England has at last settled down in the conviction that the developments and necessities

" of trade in practice always have nullified, and inevitably  
" must nullify, the special acts, no matter how carefully and  
" skillfully they may be prepared."

The views to which I have herein given expression are not those of recent conviction. On May 15, 1874, I had the honor to respond to the toast of "Our Railways," at the annual dinner of the New York Produce Exchange, and, at that time, expressed the following sentiments, which time has only strengthened:

" I am no apologist for even questionable railway practices.  
" The standards of elevated American railway credit should  
" be nailed again to many a staff whence its colors were  
" shamefully pulled down by fraud and corruption. Its con-  
" tact with legislation should be pure and undefiled; it  
" should recognize and obey charter law. Managers should  
" be restrained from trafficking in their seerets or fattening  
" upon their fortunes or misfortunes; many stocks should not  
" be so homeopathically diluted; many bonds should have a  
" firmer basis of realty; many railways should not be built,  
" and many towns and cities should cease the assumption of  
" debt upon the securities of shadows. Our railways should  
" be as sound and well-managed as our banks, for they are  
" alike custodians of public and private interests and the  
" conservators of public repute and credit at home and  
" abroad. Such concessions to public sentiment and welfare  
" are well demanded, but I submit to your mercantile judgment  
" the questionable results of erratic, restrictive railway tariff  
" legislation. It has failed in all countries which have tried it;  
" it deals in values, and cannot justly establish them for  
" transportation or food; it attacks their usefulness and  
" credit; it disturbs and diverts capital; it creates fictitious  
" and factious issues; it denies investors the rights secured  
" to them in all other forms of venture; it retards material  
" prosperity and increase; it encourages bribery and fraud,  
" jobbery and consolidation; it stimulates the disastrous con-  
" tests of labor with capital; it removes the elements of fixed  
" calculation and substitutes the uncertainties of public  
" caprice; it impairs the obligations of contracts; it tends  
" to unwise expenditures of public moneys; it places states  
" and nations in hostility to the great enterprises that devel-

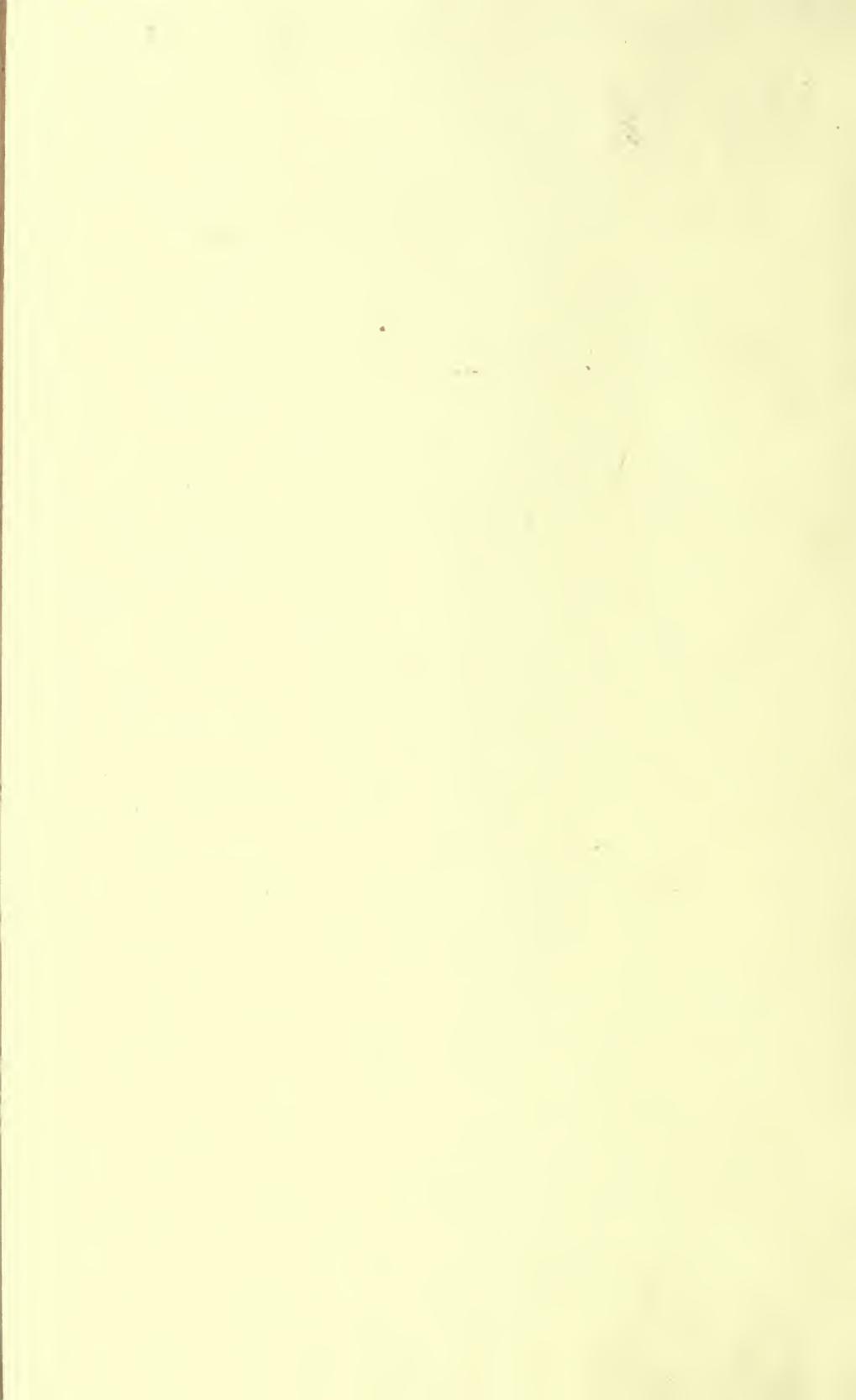
" oped them ; it involves private and public interests in antagonisms, which undermine confidence and breed long lines of disaster to both ; and lastly, it unwisely attempts to repeal the inflexible and immutable laws of trade and competition. Between the extremes, it seems to me, lies the fair road to mutual prosperity. If the voice of public clamor finds permanent expression in the enactment of unwise laws in this regard, the results are easily sketched. If fair remuneration to carriers is thus prevented, their laborers will be paid tardily ; improvements must cease, supplies can not be promptly paid for ; tracks and equipments will deteriorate, and property and life be endangered ; shops and depots can not be erected ; adequate terminal facilities can not be provided, or branches constructed for increased traffic ; bonds and interest will become doubtful, and share accounts more dubious ; and railways and all their contingent interests will be alike paralysed. On the other hand, if railway charges are excessive, coal, iron, and minerals will remain comparatively undeveloped in the hills ; more timber will stand uncut in the forests ; fewer cattle will be grazed for shipment ; grain will not be grown or milled for export ; towns and cities will not grow adequately in wealth, population, or industries to furnish traffic for transporters ; and the public and railways will feel the reflex injury. Mutual forethought and prevision, therefore, seem to say that railway policy is the wisest which supplies the best transportation facilities for the existence and growth of the people and the products of their labor, and that public policy the best which concedes a just margin of profit to carriers and the carried. In a word, either place all the elements of value in property transported under like general laws as far as practicable, or let them remain alike undisturbed by special legislation."

I would apologize for the length of this argument, were it not that in my judgment many of the war and resumption acts, which commanded and received the attention and discussion of our best brains for long periods, were not more important upon the general welfare than this, and it can not be too fully debated.

Since my arrival here to-day, I learn that a National Railway Commission has this day been suggested in the Senate, for the consideration of this vast question, by a resolution which has been referred to your Committee.

I regard this as eminently wise and just, and it is the conclusion at which commercial, conservative, and monarchial England arrived after forty years of erratic railway tariff-legislation, during which time it enacted over three thousand bills at enormous cost to, and with disastrous effect upon, both its mercantile and railway interests.

The conclusions at which that Royal Commission arrived in 1872, after five months of patient hearing, are stated on the 57th and 58th page of this argument, and I believe a like Commission, especially in free and Republican America, would arrive at the same judgment more speedily, from the greater complications involved, and our lower present rates. I urge this Commission for the farther reason that the limited time now remaining of this session, if entirely devoted to this question, and aided by the most unprejudiced railway experience, is inadequate to the wise and equitable decision which the magnitude of all the interests involved clearly merits.









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